The Heritage Foundation

LECTURE
No. 1327 | NOVEMBER 19, 2021
DELIVERED NOVEMBER 4, 2021

# What's Wrong with President Biden's COVID-19 Vaccine Mandate

*Doug Badger, The Honorable Ron Johnson, Paul J. Larkin, Martin Makary, MD, and Robert Moffit, PhD*

**KEY TAKEAWAYS**

Instead of requiring businesses to enforce a COVID-19 vaccine mandate, officials need to admit that many coercive COVID policies have not worked and change course.

The OSHA COVID-19 mandate represents a broken promise by President Biden, who said he would not use mandates to increase vaccination rates.

It would be better for leaders to have more enthusiasm for alternatives like therapeutics than for health mandates that have only sown distrust in the public.

**Robert Moffit, PhD:** This morning, President Biden is imposing a federal vaccine mandate on all private businesses with 100 or more employees, affecting an estimated 80 million Americans. It will come with fines and civil penalties starting at $14,000 per violation.

Such a federal mandate is unprecedented. It raises a large number of profound issues, including the expansion of federal power and the preservation of personal liberty, the relationship between public officials and medical science and medical practice, and the impact of such a mandate on business and labor and the national economy.

This morning, we have four outstanding guests to discuss these issues. Our first is Senator Ron Johnson, the Wisconsin Republican, who is the ranking member of the Permanent Subcommittee on Investigations of the Homeland Security and Government Affairs Committee of the U.S. Senate.



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Before his election in 2010, Senator Johnson was an entrepreneur, the owner and operator of a Wisconsin manufacturing firm. And while the Senator has emerged as a major force in a number of Senate oversight investigations, more recently, he has focused on the impact of vaccine mandates and the pressing need to provide the American people with full, complete, and unbiased scientific information on both the vaccines and therapeutics.

Also joining us is Dr. Martin Makary. Dr. Makary is professor of medicine at Johns Hopkins University School of Medicine and editor-in-chief of *Medpage Today*. A practitioner of surgical oncology, Dr. Makary has published over 200 scientific articles in professional journals. The major focus of his research has been on the evolution of health care innovations in clinical practice. Among his many achievements, Dr. Makary led the World Health Organization's work group to create global measures of surgical quality.

Paul Larkin, a senior legal research fellow at The Heritage Foundation, will address some of the major legal issues raised by the imposition of such a mandate. Before coming to Heritage, Paul had an outstanding career in government service. As an assistant solicitor general of the United States, he argued 27 cases before the U.S. Supreme Court. At Justice, he was also a senior attorney in the Criminal Division's Organized Crime and Racketeering Section. Following his service at the Department of Justice, Paul served as counsel to the U.S. Senate Judiciary Committee.

Our final speaker is Doug Badger, a senior fellow in domestic policy at The Heritage Foundation. Doug has over three decades of experience in Washington policymaking. He has served as a White House advisor to President George W. Bush on health care. He also served as a senior official at the U.S. Department of Health and Human Services [HHS] and worked as chief of staff to Senate Assistant Majority Leader Don Nickles of Oklahoma, as well as the chief of staff of the Senate Republican Policy Committee.

Now it is my pleasure to introduce you the Senator from Wisconsin, Senator Ron Johnson.

## Washington's Failed Response to COVID-19

**Senator Ron Johnson:** Well thank you, Bob, and thank you to The Heritage Foundation for putting on this event to discuss what I consider an incredibly important topic.

I'd like to start by stating what I think is quite obvious, but it doesn't seem particularly obvious to who I always refer to as the COVID gods, the agency

heads, the members of the mainstream media and social media. But there is so much we do not know about the coronavirus, about COVID 19, about COVID 19 vaccines. Can we please be honest about that?

All these proclamations, all of these policy responses are implemented by people who just feel like they represent science, that there can be no second opinions. Certainly, I'm 66 years old. As far as I can think back, when you're facing a serious medical condition, the first thing doctors will tell you is you should really get a second—maybe even a third—opinion.

That's not allowed today. We're not even allowed to ask certain questions, but here's a question I think every American should ask: Have all these policy responses worked? The shutdowns, the mandates, the not only ignoring, but sabotage, of early treatment.

To this day, the NIH [National Institutes of Health] guideline treating COVID, unlike any other disease where we say early detection leads to early treatment provides better outcomes. That's not what we do for COVID. For COVID, the NIH guideline is basically do nothing. Go home afraid, isolate yourself, hope you don't get so sick or your oxygen levels don't fall too far where all of a sudden you have to go into the hospital, and then, oh, by the way, you will lose all freedom. You lose all freedom.

So, if you look at the results of these responses, 750,000 people are now reported to have died with or from COVID. The human toll of the shutdowns, of these mandates, the trillions of dollars of additional debt on future generations, the psychological harm to young children, the loss of freedom.

I think you have to recognize that our response to COVID has been a miserable failure. And, at some point in time, I think we must understand what Albert Einstein was reported to have said: The definition of insanity is doing the same thing over and over again and expecting different results. And here we are proposing another policy prescription—mandates—that'll be unbelievably destructive to our economy, destructive to our health care sector, to our military readiness, to trucking, to transportation. And we are just barreling ahead, throw caution to the wind.

Now, I want to point out three things being denied by the people pushing these vaccine mandates.

First, they're denying natural immunity. Won't even factor it in. They're also denying what is an unfortunate reality.

I'm a big supporter of Operation Warp Speed, the public–private partnership to create a vaccine, initiated by the previous Administration. I'm not anti-vax. I've gotten every other vax—not this one, because I had COVID. I've got natural immunity. I wish these COVID-19 vaccines were 100 percent safe or 100 percent effective, but they're not.

And the science tells us that if you're fully vaccinated, you still can get infected. You can transmit. You can get seriously ill. You can die. Let's just acknowledge that fact.

I held an event Tuesday about these mandates with the COVID-19 vaccine-injured. One of the presenters showed a very simple decision tree on the mandates. The first box said is the COVID 19 vaccine effective? If yes, it went to the other box, then the mandates are pointless, right? I mean, if they're so effective, if you're vaccinated, why do you care whether somebody else is? The other line said, no, they're not effective. It goes to the exact same box. If the vaccines don't prevent infection, don't prevent transmission, what's the point of the mandate? They are pointless.

And the third reality that the vaccine mandate purveyors are denying is vaccine injuries. Now *rare* is a relative term. But I'm dealing with the vaccine-injured. Whenever I hear somebody proclaim that vaccine injuries are rare and mild, that's like fingernails on a chalkboard to me, because they're rare and mild until they happen to you or your loved one. Vaccine injuries are real.

Let me give you the stats. For the seasonal flu, on average over 26 years, we average about 7,550 adverse events reported on the Vaccine Adverse Event Reporting System (VAERS)—on average, 78 deaths per year.

For the COVID vaccines in 10 months, we've had 837,000 adverse events reported on VAERS and 17,619 deaths. I realize that does not prove causality. The other criticism of VAERS is it dramatically *understates* the number of adverse events.

But it's also true that over 5,500 of those deaths have occurred on day zero, one, or two days following vaccination. That ought to concern the COVID gods. The American public ought to know that. And before we impose any mandate, before we trample on somebody's freedom, force them into a life-altering, gut-wrenching decision, their job, their livelihood versus putting an experimental vaccine in their arm, we ought to at least acknowledge the fact that vaccine injuries are real. With that, I'll retire. Thank you.

**Dr. Moffit:** Ladies and gentlemen, we're going to question our panel on various aspects of this vitally important issue. Before I get to my colleagues, I want to ask Senator Johnson a pointed question. Actually, Senator, if you don't mind my saying so, you've been a lightning rod on this issue. You've brought this to the attention of your Senate colleagues. Can you just tell me, responding to something that is very clear: Why, exactly, are you prepared to take a lot of pressure and a lot of heat on this. Why did you decide to do this?

**Senator Johnson:** I was an advocate for early treatment since May 2020, and I got a lot of criticism. I was attacked a lot for just advocating that as well. But because of my advocacy, I was contacted by a former Green Bay Packer Hall of Fame lineman named Ken Ruettgers, whose wife experienced a serious vaccine injury, the neurological symptoms, the inner vibrations, the numbness. So when I was connected with them, he was part of a group of 2,000 individuals on Facebook. And they just wanted to be seen, believed. They just wanted to be acknowledged. And so I put on an event for them in June to let them tell their stories. And of course, I was attacked. Rather than above-the-fold, front page coverage of these individuals telling their stories in Wisconsin, what it was was a picture of me with a headline "So fundamentally dangerous."

I don't think the truth is dangerous.

I've been in contact with the vaccine-injured. I've seen how they've been ignored. I see how inhumane that is. So I have to advocate for them.

**Dr. Moffit:** Thank you very much, Senator.

Paul Larkin, the imposition of this mandate is opposed by many because they consider it an overreach of federal power. And for certain the President's decision this morning is going to end up in the courts. But regardless of what the courts eventually decide, Paul, what do you think are the central legal issues that are raised by the imposition of this mandate?

## Why the Federal Mandate Is Illegal

**Paul J. Larkin:** Start from the basic proposition that is agreed to by everyone: Federal agencies have only whatever authority Congress has vested in them. So, for a federal agency to impose a vaccine mandate, you must look to see what statutes grant them the authority to do that or what statutes grant them jurisdiction over a particular area. In this case, we're talking about the Occupational Safety and Health Administration [OSHA] and the Occupational Safety and Health Act. Now, if you look at that statute, it seems clear to me from the text of the provisions dealing with standards—including temporary standards—as well as the text of the act as a whole and all of the related laws that deal with public health that OSHA does not have the authority to impose this vaccine.[1]

Let me give you a simple example: OSHA can adopt standards for toxic or harmful physical agents. *Toxic* generally means poisonous. It's not a term that is used to describe a contagious disease like a virus or a bacterium. And a harmful physical agent doesn't describe a biologic, which is a term used to describe how vaccines are composed. So the standard has to satisfy the law,

and it doesn't fit under those headings. Plus, if you look at the other relevant statutes, the ones dealing with our health care agencies, you will see that it is the Food and Drug Administration [FDA] that has the authority to regulate drugs or biologics. A vaccine has a foot in each camp. It is a drug, and it is a biologic. It is the FDA that is responsible for deciding whether a particular vaccine can be distributed interstate commerce, and it is the CDC [Centers for Disease Control and Prevention] that then offers a recommendation to physicians as to when and how it should be used. It is not the Department of Labor. It is not the Occupational Safety and Health Administration.

History and common sense also tend to support my interpretation of the text. There has never been a general federal vaccination requirement. That has come from the states. It is the states that have a police power that allows them to regulate business and people to protect the public health.

Congress does not have that authority. The states have imposed vaccination requirements, not the federal government, at least not a general federal one. Put aside unique circumstances, such as where the federal government tries to regulate what happens in the military to make sure that they are effective in protecting our nation. We're talking about a general, public vaccination. The federal government hasn't done that. And if the federal government were to do that, how likely is it that it would've given this authority to the Department of Labor rather than to the Department of Health, Education, and Welfare, the predecessor to HHS, or to HHS now, or to one of the components of HHS, like the Food and Drug Administration?

In fact, the obvious fact that the President did not direct the Secretary of HHS to impose this requirement, like the dog that didn't bark, tells us a great deal. It's HHS that would have this authority, if anybody does, not the Labor Department, because OSHA deals with workplace hazards. Vaccines are not like gloves or masks or gowns. Vaccines have an effect on the human body. Not only are they injected beneath the skin or taken in other ways; they work on the body's chemistry, which gloves do not, which safety glasses do not. It is not a matter that Congress would've told OSHA to deal with. So the problem as I see it is not a policy one; it's a legal one. And OSHA doesn't have this authority.

## How Officials Are Undermining Public Trust and Ignoring Alternatives

**Dr. Moffit:** Whether OSHA has the legal authority to do this or not, the most important question for most Americans is: How will this affect their health? Dr. Makary, normally when doctors and patients get together,

they make a determination about what is the proper medical approach, the appropriate medical procedure. And of course, you have a body of scientific information, and you fine tune that information in determining what best applies to the particular condition of a patient. Based on your experience, looking at this vaccine mandate, what do you think are the major medical drawbacks of the Biden Administration's approach?

**Martin Makary, MD:** Thank you, Dr. Moffit, and thanks for having me. So we should want as many vulnerable Americans who don't already have immunity to become immune with a vaccine, because immunity downgrades the infection. It doesn't eliminate it. The downgrading makes it a more manageable illness, and it reduces hospitalization and transmission.

Now what's going to be the most effective way to get people vaccinated? Is it a politician doing a television advertisement? We know from anti-smoking efforts: That does nothing. Or is it a local physician making the case that we had a patient who came in with no immunity, got very ill, went on a ventilator, and just before intubation, asked for the vaccine and unfortunately had to be told it has no benefit at that point? The power of testimonials, local medical officials, and the context of a personal relationship is I think the most powerful vehicle to get those at risk immunized.

If you look at the mandate, it does represent, to some people, the excessive hand of government, and therefore they become hardened to the idea. It alienates people. We see people who are a hard no simply because they believe the government shouldn't be able to do this. Well, that's unfortunate because we might have otherwise convinced some of those people to get vaccinated.

Let's be honest: The mandate does represent a broken promise by every single top public health official and White House official in power to date. All of them had said we are not going to do mandates in the past. So if you're an everyday American, and somebody vulnerable that we want to get vaccinated, you have a right to be angry right now. The mandate represents a broken promise by the President of the United States and his top politically appointed doctors.

That idea, by the way, of a mandate, if actually you remember, was introduced to the public in a *New York Times* op-ed by Dr. Zeke Emanuel. And it came out the same day that J&J [the Johnson and Johnson vaccine] was pulled off the shelf in an emergency move because of the fears of people dying from the vaccine. So for a lot of people, they have a right to be frustrated right now. They've lost trust in public health, and that's going to hurt us beyond COVID.

Final point: I would love to see the same enthusiasm for these mandates for therapeutics. We have some state-of-the-art therapeutics such that no one may be a silver bullet, but in combination are pretty impressive. Even if you avoid the therapeutics where there's controversy, there's solid randomized controlled trials supporting several safe therapeutics—as simple as a hypertonic saline spray and mouthwash and Prozac (fluvoxamine) for which there's solid evidence. Merck's new drug, Molnupiravir, which is now authorized and in use in the U.K., cut COVID deaths to zero. No one who's gotten the drug has ever died, and that's in the formal randomized controlled Phase III trial. All of those therapeutics in combination could have a dramatic effect on a population when used in combination. So no one should be dying of COVID right now, with rare exceptions. I wish we saw the same enthusiasm for therapeutics as we have for the mandates.

**Dr. Moffit:** Dr. Makary, there is another question that is vitally important in the context of this federal mandate. It is this issue of natural immunity that Senator Johnson brought up. How effective is natural immunity compared to the vaccines? And what does the professional literature tell us about it?

**Dr. Makary:** There are 16 solid, respected studies that demonstrate that natural immunity is as effective or more effective than vaccine-induced immunity. The largest population study ever done out of Israel showed that it's 27 times more effective than vaccinated immunity in preventing symptomatic COVID.[2] When that came out of the Israeli health ministry, it was around the time that data came out on boosters, reducing hospitalization among seniors over 65 tenfold. So here you have two pieces of data coming out of Israel, both large studies, and Dr. [Anthony] Fauci immediately calls the data on boosters "dramatic data" and rushed to create policy around it. That was a tenfold reduction in hospitalization among seniors.

The 27-fold increased level of protection of natural immunity in the same Israeli population was ignored. I believe it's for two reasons: One, politically, politicians entrenched themselves in a position that every human being with two feet needs to get vaccinated, period. They would ignore the evolving science. Two people have told me privately, "Don't talk about natural immunity. People will go out there and just get the infection and not get vaccinated."

I say, "We can be both honest with the science and still encourage vaccination at the same time."

So the data is solid on natural immunity. All the studies show that it's highly effective, except for two, both put out by the CDC, jerry-rigged and forced. They used of what we call statistical fishing, where even though they

have data on all 50 states over 19 months, they cherry-picked a two-month interval in the state of Kentucky and said, "Ah, in this little sliver of data, natural immunity was worse." In fact, the rate of infection of both groups, natural and vaccinated, in that study were less than 0.1 percent. So it was extremely rare. And the other was the study they just put out, and I tweeted a long critique of it.

## The Impact of the Mandate on Employers and Employees

**Dr. Moffit:** Doug Badger, thank you for being with us. As Senator Johnson pointed out, higher vaccination rates are obviously a very good thing. However, federal mandates on employers, from what we hear, are going to have only a marginal increase in the number of vaccinated adults. That is according to the Biden Administration's own data. Nonetheless, they are plunging ahead with a sweeping mandate that is likely to be burdened with a variety of practical infirmities. Based on your experience as the policy advisor to the White House, why do you think this is such a bad idea?

**Doug Badger:** Thank you, Bob, for that question, and good morning, everyone. When you take a public policy decision, as I'm sure Senator Johnson will tell you, you must take account of the broader context. You always have to look at the pros and cons.

The elephant in the room about this federal mandate is the fact that we are experiencing an acute labor shortage right now in the United States. As of August, there were 10.4 million unfilled jobs—1.5 million in critical sectors, such as health care and social services. Hospital employment dropped by 165,000 workers between February and May of last year. As of September, hospitals had filled fewer than half of those vacancies. Nursing homes are in worse shape: They've shed 410,000 employees. They are operating at 12 percent below their pre-pandemic workforce levels. In education, we lost 19,000 school workers in the month of September alone. Twenty-five thousand quit their jobs in August, part of the record 4.3 million quits that we had in the month of August.

Obviously, the causes of these labor shortages are many and complex, but vaccine mandates can only move them in the wrong direction. Consider what's happened in places that have already adopted mandates. New York's largest hospital system had to fire 1,400 of its 76,000 employees, about 1.8 percent of their workforce. Nationally, around 40 percent of hospitals have implemented a mandate, and they've lost an average of 1 percent to 2 percent of their workforce. This is especially problematic for rural hospitals.

We can expect an OSHA general mandate to produce similar results throughout the economy. A Kaiser Family Foundation poll taken last month found that 37 percent of unvaccinated workers, 5 percent of adults overall, say they would leave their jobs if their employer required them to get a vaccine or get tested weekly. When labor supply is tight, government policies should encourage people to return to work. These job or job ultimatums can only move the economy in a much worse direction.

**Dr. Moffit:** This novel mandate is imposed directly on America's employers. And if they don't comply, they face thousands of the dollars' worth of fines. Very serious fines. Beginning, as I said earlier, at $14,000 for the initial violation. But employers, as far as I understand it, don't have any experience in enforcing anything like a federal vaccine mandate. What kind of practical problems do you think that employers are going to face?

**Doug Badger:** They are numerous. I'll discus a few. My comments are based on a first reading of the Emergency Temporary Standard [ETS] and some of the accompanying documents the Labor Department issued a little over an hour ago.

The first question for an employer is: "Do I have 100 employees?" That is very much a moving target. You do count part-time workers and temporary workers, but if you have someone from a staffing agency, that person doesn't count. They count against the staffing agency's headcount. The same is true for independent contractors. If your employee is a minor, that person counts. The other question is whether your company has multiple locations. You must sum all employees at all locations to determine if the mandate applies. If you have four locations, each with 25 employees, you are covered by the mandate. If you have 99 workers at one location, you are not covered by the mandate.

The next question on headcount comes with when it is taken. Labor forces can vary with time. The headcount, according to the Labor Department, is as of tomorrow morning, November 5. If you have more than 100 employees on November 5, you are covered by the mandate.

If your headcount subsequently drops, you are still covered by the mandate. What if you have fewer than 100 employees tomorrow? Then you're not covered by the mandate. But if your headcount increases—think about temporary hires over the Christmas season—and goes over 100, you are now covered under the mandate and remain covered even if your headcount subsequently drops.

Then there's the practical question of how you know if your employee is vaccinated. The CDC card certainly counts. What if they've lost the CDC card and can't get a new one? Then there's a fairly complex self-attestation document that the employee has to sign.

What about those who are unvaccinated? They must take weekly tests and present laboratory documentation of a negative result. They can't say, "Hey, I went and got tested today and the lab says they'll have the results back first thing Monday." They can't report to work without the negative results.

What about at-home self-tests—which are a wonderful idea—that the United States unfortunately has not pursued? You can do a self-test, but you have to do it in front of your employer or on what they call an authorized telehealth proctor. I'm not sure what that is.

Unless you're willing to swab your nose in front of your employer, you probably have to get a more expensive test where the results are delayed.

The employers must keep a record of every vaccine documentation and of every test documentation. Those are subject to employer health record rules under the Americans with Disabilities Act. If word gets out that Joe tested positive last week, the employer may face liability and potentially have to show that they have complied with federal privacy laws.

And if OSHA asks for those records, you have to supply them to the Labor Department within four business hours of the request.

Employers must also play judge, determining whether an individual qualifies for a religious exemption, including from testing. As Paul will tell you, judges are ruminating on that complex issue even as we speak. Employers will also have to play lawyer. The Administration's improvisational approach to mandates means that private employers could potentially be subject to competing federal mandates. If you're a federal contractor, there's one set of rules. The OSHA vaccine mandate applies more generally throughout the economy. There's also a June 2021 OSHA Emergency Temporary Standard for health care facilities, which does not require that health care workers be vaccinated. CMS [Centers for Medicare and Medicaid Services] is issuing that mandate today. All of these are different. All of them have different qualifications. And please don't ask me what happens to a hospital that's a federal contractor and has 100 employees. I don't know which you must comply with.

Finally, there's the competition between federal and state mandates. The first point OSHA makes on its website is absolutely emphatic: Federal law applies. Even if your state says you can't have vaccine mandates, the federal government says you must comply with the federal mandate. That also applies in the 21 states that enforce federal workplace safety laws. OSHA is threatening those states, saying that they will take away their authority. Good luck enforcing workplace safety laws in a state like that.

From the perspective of an employer, there is a legally suspect federal mandate and a conflicting legally suspect state mandate. You have to figure out which applies in your workplace.

Finally, there's a practical matter. There are roughly 800 OSHA inspectors. There are roughly 164,000 firms with at least 100 workers. According to one former OSHA policy advisor, Debbie Berkowitz, it would take 160 years for OSHA inspectors to visit every one of those sites at least once.

So there are practical problems with this ETS. It took OSHA nearly two months to try to sort out all these questions before publishing the rule. That tells us that the challenges employers will face in implementing this rule will be even greater.

**Audience Question:** What are the opinions surrounding weekly testing? I know the vaccine is the major focus, but it seems like the testing is a good option to keep people safe. And a follow-up question: If the temporary standard is challenged, can weekly testing still be required?

**Dr. Makary:** The whole lexicon is wrong. We should be talking about the immune and non-immune. Not the vaccinated and unvaccinated. That was an imprecise framework that was imposed upon us despite many of us trying to use a different vocabulary.

Let's be honest: The idea of testing people who are not vaccinated was in part hostile. There was a strong sentiment that was very overt by many that this was a form of punishment, that this was punitive. One thing in medicine is we have never crossed that line and never should—that medical tests or interventions would be punitive. We've been taught from day one and it's part of our great heritage that we're always honest and fair with people. For the first time, we've crossed that line to say, "This is a punishment." And that's why people have said—and these are high-level people in the Biden Administration or immediate former advisors—"We need to test people twice a day at their own expense."

So what we are seeing [with the current approach to testing] is basically a form of class warfare by elites out of touch with everyday people. I can tell you as a physician, you see all kinds of people in America, and I'm constantly reminded that most Americans don't live like me. Half of Americans live paycheck to paycheck, and when they're put out of their work because the antibodies in their blood system are not authorized by Dr. Fauci as the right type of COVID antibodies, that's an American tragedy.

Rich people have done very well in this pandemic. Most are remodeling their homes; they're not making them smaller. You can't even find clips and nails and wood and ceramic tiles. This has been a very good time for wealthy people in America, but the other half of America has had a very different experience.

**Audience Question:** Does the rule this morning speak to all remote employees? Do they count toward the 100-employee threshold as well?

**Doug Badger:** They are part of the headcount, but the vaccine mandate doesn't apply to them.

And by the way, if you are an employer observing this, compliance attorneys are paid very well for a very good reason. My advice is free and worth every penny. It's based on a reading of a rule that was released this morning.

But, yes, when you do your headcount, you count remote employees and employees who work exclusively outdoors. But employees who don't enter the workplace are not subject to the vaccine or testing requirement.

**Audience Question:** Paul, what will the courts do with the OSHA rule if there's no authority from Congress to do this mandate?

**Paul Larkin:** There are 600-plus federal judges, so the likelihood of there being unanimity is between nil and zero. So I don't think that is going to be the result. We won't see every judge come up with the same answer, but I think at the end of the day, as the cases work through the trial courts, to the appellate courts, to the U.S. Supreme Court, what you will wind up seeing is that the courts will agree that OSHA does not have the authority to adopt this rule.

Unfortunately, to the extent people in the Administration know that that is where this is heading, what they're doing is gaming the system. They did this in the summer with respect to the CDC home eviction moratorium. They knew the Supreme Court was going to strike it down, but they went ahead and did it anyway, simply for political reasons. And to the extent they're using that same approach here, what you're going to have is a lot of the harms that my colleagues on this panel have talked about occur simply because the Administration didn't go to Congress, which could have decided all of these issues that we're talking about.

So what we have is a circumstance where I think eventually it'll get struck down, but there'll be a fair amount of harm that's caused along the way.

**Dr. Moffit:** Thank you very much, ladies and gentlemen, but all good things must come to an end. I would like to thank this outstanding panel for their expert opinions on the federal mandate that was issued this morning and its likely consequences.

As noted, this is an unprecedented federal mandate. It is unfortunate that leading up to this moment, the President has denigrated Americans who have not yet gotten the vaccination. The right policy is to provide our fellow citizens with the very best information available—based on the science, of course—and trust them to make the right decision for themselves and their loved ones with the advice of their physicians. In any case, rest assured that the legal battle is to be joined.

**Doug Badger** is a Senior Fellow in Domestic Policy Studies, of the Institute for Family, Community, and Opportunity, at The Heritage Foundation. **The Honorable Ron Johnson** represents Wisconsin in the United States Senate. **Paul J. Larkin** is the John, Barbara and Victoria Rumpel Senior Legal Research Fellow in the Edwin J. Meese Center III for Legal and Judicial Studies, of the Institute for Constitutional Government, at The Heritage Foundation. **Martin Makary, MD,** is Chief of Islet Transplant Surgery at Johns Hopkins Hospital and Professor of Surgery at Johns Hopkins University School of Medicine. **Robert Moffit, PhD,** is a Senior Fellow in Domestic Policy Studies.

## Endnotes

1. For a more detailed discussion of the issue, see Paul J. Larkin and Doug Badger, "The First General Federal Vaccination Requirement: The OSHA Emergency Temporary Standard for COVID-19 Vaccinations," SSRN, November 12, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3935420 (accessed November 19, 2021).
2. Meredith Wadman, "Having Sars-Cov 2 Once Confers Much Greater Immunity Than a Vaccine—but Vaccination Remains Vital," *Science*, August 26, 2021, https://www.science.org/content/article/having-sars-cov-2-once-confers-much-greater-immunity-vaccine-vaccination-remains-vital (accessed November 19, 2021).