

Congressional action shows OSHA vaccine mandate is a bald-faced power grab

Presidents of both parties wrongly have expanded the unilateral executive policy playbook, but [President Biden](#) and House Speaker [Nancy Pelosi](#) (D-Calif.) are still teaching a master class in unaccountable and undemocratic government with respect to the Occupational Safety and Health Administration's private employer [vaccine mandate](#). While most news coverage has focused on the [court challenges](#) to OSHA's questionable order, White House and congressional leaders are also doing backflips to prevent Congress from voting on the matter — and hoping no one notices.

In early December, a bipartisan group of senators forced a vote and [approved](#) a joint resolution to end OSHA's vaccine mandate. So far, the House has been prevented from voting on either the Senate-passed resolution or a companion House resolution with 212 cosponsors. It seems OSHA's broad use of emergency powers is less about "efficient" government action during a time of crisis and more about imposing mandates and restrictions that never would pass the democratic process.

The end-run around the legislative process last year didn't start with the vaccine mandates. When Speaker Pelosi wanted to extend a legally unauthorized Centers for Disease Control and Prevention (CDC) [eviction moratorium](#), she didn't try to enact a law — which would have resolved the dispute over congressional authority. Never mind that she is the most powerful legislator in the country, whose party controlled the presidency and both chambers of Congress. Instead, [she petitioned](#) unelected bureaucrats at the CDC to extend an emergency regulation that a majority of Supreme

Court justices already had questioned and later struck down.

So when President Biden wanted a private-employer vaccine mandate this fall, he didn't ask congressional leaders to pass a law conferring that authority. The recent Senate vote confirms that Congress would not have granted it, as our political rulers surely knew. Instead, almost a year after a vaccine became widely available, the Biden administration invoked an emergency provision of the [Occupational Safety and Health Act](#) to force those who employ more than 100 people to require vaccinations or weekly COVID testing.

Like the CDC eviction moratorium before it, the OSHA vaccine rule is tied up in litigation. One federal appellate court issued a nationwide injunction in November, ruling that the vaccine mandate was likely unlawful. Although a divided panel of another appellate court assigned to decide the consolidated legal challenges overturned the stay in December, the Supreme Court agreed to hear the matter on an expedited basis. Congress is normally all too happy to punt to the courts on controversial issues, but the pending litigation has not stopped many in Congress from stepping up to perform their duties.

The [Congressional Review Act](#) (CRA) gives Congress a window of time in which it can, by joint resolution and a presidential signature, overturn a new federal regulation once it is properly reported to Congress. Although rarely used, this important part of the [Administrative Procedure Act](#) gives Congress the opportunity to have meaningful oversight over agency rulemaking.

OSHA initially failed to send its emergency vaccine mandate to Congress for review, as required by the CRA, but it relented after members of Congress complained. A bipartisan group of senators then forced a vote on a joint resolution under the CRA to overturn it. Clearly, the mandate does not have majority support in the Senate.

The [companion resolution](#) with 212 cosponsors in the House is unlikely to ever get a vote. Why? Because Speaker Pelosi doesn't want to risk its passage or put her fellow party members to a [tough vote](#), even if President Biden would veto any joint resolution that passed both congressional chambers. She wants her policy preference to prevail, but without accountability for her members who support the OSHA rule.

Those who want to govern by questionable regulations rather than law may believe that some subjects are just too complex for legislators to understand or get "right." Elected officials should yield to the experts, according to this view. The same individuals also try to exploit any emergency and extend its duration to justify unilateral rule through undemocratic means.

A true emergency may require the government to act swiftly to save lives or property, especially when there is no time to reach a consensus that legislation requires. But it is abundantly clear that many in power simply oppose democratic decision-making when the result is uncertain.

President Biden isn't the first to abuse emergency powers to push a preferred policy that had no shot in the legislature. After all, [President Trump's](#) administration initiated the illegal CDC eviction moratorium.

- [Biden coronavirus vaccine-or-test mandate goes into effect](#)
- [Supreme Court issues revised transcript of Gorsuch remark about flu...](#)

Many states have [enacted reforms](#) that limit the duration of executive emergency orders. Such reform should be replicated at the federal level, but the power to issue eviction moratoriums and private employer vaccine mandates was never granted to federal regulatory agencies.

If the government needs sweeping emergency powers, those policies should

be shaped through the normal, constitutional legislative process, even if that is inconvenient to those who think they know what's best for us. Members of Congress then will be praised or jeered by their constituents accordingly.

Daniel Dew is legal policy director at [Pacific Legal Foundation](#) (PLF), a nonprofit legal organization that defends Americans' liberties when threatened by government overreach and abuse. Todd Gaziano is PLF's chief of legal policy and directs its Center for the Separation of Powers.