



## STATE OF IDAHO

September 17, 2021

President Joseph R. Biden  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Dear President Biden:

We, the undersigned constitutional and legislative officers of the State of Idaho, write in opposition to your recent directive that the Department of Labor issue an Emergency Temporary Standard (ETS) under the Occupational Safety and Health Act (OSHA) mandating that all private employers of 100 employees or more require their employees either be vaccinated against COVID-19, submit to weekly COVID-19 testing, or be terminated. While we fully welcome creative and effective means to end this terrible pandemic, there appears to be no legal basis for the Department of Labor to issue an ETS of this nature. We respectfully ask that you rescind this directive to the Department of Labor. We strongly express our opposition to your proposed mandate for three primary reasons.

**1. The power to promulgate and enforce vaccination policies in the sovereign states belongs to the states, not the Federal Government.**

Congress has no constitutional authority to directly mandate vaccinations in the states; nor has Congress ever attempted to do so. Congress normally preserves the constitutional balance between the National Government and the states.”<sup>1</sup> As such, vaccination policies have historically been left to the states, and the State of Idaho has responsibly exercised its public health powers through various statutes and rules.<sup>2</sup> For example, the chapter of Idaho law (Title 39, Chapter 48) addressing vaccinations (immunizations) in schools has operated for more than 40 years.

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<sup>1</sup> *Bond v. United States*, 572 U.S. 844, 862 (2014) (internal quotation marks omitted).

<sup>2</sup> *See, e.g.*, Idaho Code § 39-4801, *et seq.*; §50-304; § 39-414. *See also*, IDAPA Rules 16.02.10; 16.02.11; & 16.02.14.

Included within this chapter are exemptions from vaccinations that have equally existed since the creation of these code sections.<sup>3</sup>

Your directive runs the risk of displacing Idaho's legal regimen, causing confusion in the private sector, and improperly invading the province of the State and the sound discretion of Idaho's business leaders. The State of Idaho is already involved in a series of discussions with our business leaders concerning the actions they are employing to address COVID-19 consistent with the State of Idaho's existing vaccine laws. You should withdraw this directive to the Department of Labor and continue the state-directed approach to vaccinations as has been practiced for years.

**2. The Department of Labor lacks the requisite legal authority to issue the mandate you have directed.**

The COVID-19 virus is not the sort of "substance," "agent," or "hazard[]" that OSHA was intended to cover. OSHA narrowly applies to hazards unique to a workplace, not pandemics or other public health crises that permeate all aspects of daily life and impact the employed and unemployed alike. Congress made this clear in directing OSHA to establish workplace standards with regard to "employment and places of employment."<sup>4</sup> This limitation is confirmed by Congress's findings that OSHA is necessary to address "personal injuries and illnesses arising out of work situations [that] impose a substantial burden upon ... interstate commerce."<sup>5</sup> Congress expressly intended to encourage "employers and employees in their efforts to reduce the number of *occupational safety and health hazards* at their places of employment."<sup>6</sup> It seems readily apparent that use of the Department of Labor to issue an ETS mandating the COVID-19 vaccine across all industries, employers, and job types is a clear overreach of executive authority.

Generally, when Congress asks an agency to exercise its powers, Congress speaks clearly. Here, Congress has not issued any clear directive to the Department of Labor to extend OSHA beyond its Congressional mandate to address occupational safety and health hazards. The order to the Department of Labor should be rescinded as it is inconsistent with Congress's intent and delegation of authority. Additionally, if the executive branch or the Department of Labor can identify some clear congressional directive to this effect, the implementation of such a broad sweeping mandate of

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<sup>3</sup> Idaho Code § 39-4802.

<sup>4</sup> 29 U.S.C. § 652(8).

<sup>5</sup> 29 U.S.C. § 651(a).

<sup>6</sup> 29 U.S.C. § 651(b)(1).

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general applicability likely violates the non-delegation doctrine, which prohibits Congress from delegating its lawmaking function to the executive branch.<sup>7</sup>

**3. Cooperative federalism requires the Department of Labor not to issue the ETS you have directed.**

As we have set forth above, there are significant legal issues raised by your directive to the Department of Labor. We understand the significance of the COVID-19 pandemic, but we, as the leaders of the State of Idaho – in direct consultation with our constituents – are in the best position to determine the appropriate response within the borders of our state, not the federal government. One size fits all federal solutions are unproductive and do not appropriately balance the specific interests and needs of states or the businesses operating within our states.

If you choose to continue to move forward in this direction, the State of Idaho will have no choice but to take the necessary legal actions to uphold its sovereignty, check the overreach of power by federal bureaucracy, and uphold the system of checks and balances our Constitution guarantees.

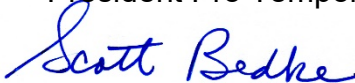
Sincerely,



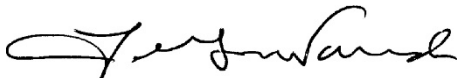
BRAD LITTLE  
Governor



CHUCK WINDER  
President Pro Tempore



SCOTT BEDKE  
Speaker of the House



LAWRENCE WASDEN  
Attorney General

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<sup>7</sup> The constitutional-doubt canon bolsters this conclusion because it requires that a statute be construed as fairly as possible to avoid a conclusion it is unconstitutional or that there are grave doubts as to its constitutionality.<sup>7</sup> *United States v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916).

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C: The Honorable Mike Crapo  
The Honorable James Risch  
The Honorable Mike Simpson  
The Honorable Russ Fulcher