

decisions outside the traditional merits docket. Historically, shadow docket orders are used to help resolve routine or procedural questions frequently without public deliberation, full briefings, or even signed opinions.

But as Professor Vladeck testified, there has been a notable uptick in the Supreme Court issuing shadow docket orders that are “having a far broader substantive impact, for better or worse, compared to [the] emergency rulings in the past.” And many of these shadow docket orders appear to be driven by ideology.

Let me tell why I say that. Listen to these numbers. During the 4-year Presidency of Donald Trump, the Supreme Court issued 28 grants of emergency relief on the shadow docket at the request of the Trump administration—28 grants of shadow docket relief out of 36 requests. Each of these orders advanced President Trump’s political agenda, including one that allowed the resumption of Federal executions for the first time and in nearly two decades.

Now, let’s do a comparison. If there were 36 requests of the Supreme Court for shadow docket opinions and 28 of them were granted in the 4 years of Donald Trump, how about previous Presidents? During the 16 years of the George W. Bush and Obama Presidencies, from 2001 to 2017, the Supreme Court issued four—four—orders in 16 years. In this last 4-year period of time, they granted 28 out of 36 with the Trump Justice Department.

With its handling of Texas’s abortion ban, as well as other shadow docket orders, the Supreme Court’s conservative majority has indicated a willingness to change substantive law in sweeping ways without due deliberation and public reporting.

In doing so, they are undermining confidence in the Court, and the conservative majority has opened the door for ideologically driven legal schemes to rewrite laws from the shadows, like SB 8. This is a five-alarm fire for due process, as well as our constitutional rights.

And as I expressed during this today’s hearing, I hope every Member of the Senate—Democrat or Republican—will join together to protect and preserve independent, transparent, and reasoned judicial decision making based on the rule of law.

At a time when the public’s confidence in our governmental institutions has been greatly eroded, we must restore it.

I yield the floor.

The PRESIDING OFFICER (Ms. ROSEN). The Senator from Utah.

UNANIMOUS CONSENT REQUEST—S. 2840

Mr. LEE. Madam President, I rise again today to express my objection to President Biden’s sweeping vaccine mandate and to offer legislation that would protect Americans from this Federal intrusion.

As I said yesterday, the Federal Government has no business mandating COVID-19 vaccination for all Ameri-

cans. Unfortunately, at least some of my colleagues disagree. The President of the United States said, while announcing the mandate, “This isn’t about freedom or personal choice.”

“This isn’t about freedom or personal choice.” It stuns me to think that a sweeping Federal mandate could be about anything other than freedom or personal choice. It is like robbing a bank and then saying it is not about the money.

Our Constitution was designed to protect the liberties of the people of the United States. But now, the government is being used by the Executive to force Americans to be vaccinated or to be terminated.

Yesterday, I came to the floor to speak about those Americans with sincerely held beliefs, whether religious or otherwise. My bill yesterday would have simply required that any mandate of this sort contain an exemption for those individuals.

Now, I don’t believe that such an exception would be sufficient to resolve the constitutional and the policy problems with such a mandate. But there are millions of Americans who would be able to live according to their beliefs if, in fact, such an exemption were included by law, which it should be.

Lamentably, my colleague the senior Senator from Washington objected. So I pledged to come back again today and tomorrow, for as long as it takes, to win the fight against this egregious mandate.

Today, I am providing another opportunity for this body to protect Americans.

This mandate poses a real threat to the well-being of millions. Those who choose not to be vaccinated are at risk of losing their jobs. My office has been in contact with 144 Utahns who are concerned about this very issue. I shared some of their stories yesterday.

Despite what many on the other side of this debate would have you believe, these are, in fact, everyday Americans: people with preexisting medical conditions, like autoimmune disorders. These are people who are just wanting to provide for their families and not to be able to expect that. These are pregnant mothers who are concerned about the safety of their own health and that of their unborn children.

Some of these people are the heroes of yesterday. They are first responders; they are medical professionals and essential workers who sacrificed to carry our Nation through the hardest days of this pandemic. And they are still heroes today. These Americans are not the enemy.

President Biden and those who support this effort are grasping for solutions they believe can bolster their political position and shift blame on the status of the pandemic. Those paying the price are the people back home, including many of the people I just described.

So today, I offer another proposal. This bill would provide those Ameri-

cans harmed by this mandate with a means of recourse. Under this bill, those who lose employment or lose their livelihoods due to this mandate may sue the United States for relief. The bill would make these very Americans whole after the President of the United States made working impossible for them.

This bill is only one of many that I have introduced to combat this unconstitutional, unwarranted, indefensible mandate. While I believe this mandate will eventually be invalidated in court—I am quite confident that it will—until that day comes, these bills can provide businesses and the American people with the certainty that they need to make their own decisions. We will be protecting their God-given and constitutionally protected right to make medical decisions for themselves.

So, Madam President, I am here today and I will be back tomorrow and fighting against this mandate for as long as it takes.

Madam President, as if in legislative session, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 2840, and that the Senate proceed to its immediate consideration. Further, I ask unanimous consent that the bill be considered read a third time and passed, and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there an objection?

Mr. DURBIN. Reserving the right to object.

The PRESIDING OFFICER. The majority whip.

Mr. DURBIN. Madam President, more than 680,000 Americans have died from COVID. The majority of these deaths occurred before we had viable, effective, and safe vaccines. Doctors were begging for these vaccines to save lives, and now we have three safe, effective, widely available vaccines in America. All three have been proven successful and safe.

However, one in four adults in America still refuses to get the vaccine. According to the CDC, these unvaccinated individuals—listen to this—are 10 times more likely to be hospitalized from COVID, 10 times more likely to die from COVID than those who got the shot. And as long as large numbers of Americans remain unvaccinated, this virus is going to continue to spread and raise the risk of mutation and more deadly variants.

We have tried approaches to incentivize people. What more can we do? We created a lottery in Illinois and said: If you are vaccinated, you are automatically buying a lottery ticket; you don’t even have to pay for it.

The head of the Federal Bureau of Prisons union for employees, with only 50 percent of those working in Federal prisons vaccinated, said they were going to set up a popcorn machine at the prisons in the break room in the

hopes of getting people to be vaccinated—trying everything to get people to try the vaccine.

We have tried every approach to incentivize them, but the vaccine numbers are not where they need to be. So, facing this reality, the President accepted responsibility to try harder. He has directed Federal Agencies and OSHA to mandate vaccination for Federal employees and certain private workers. These directives were issued under the OSHA Act and other established legal authorities; and, listen, they have been welcomed by the Business Roundtable and other employers who were waiting for a signal from the White House that we were serious, and they are supported by a majority of the American people.

I recognize that some of my colleagues disagree with that action, and that has prompted this bill from my friend and fellow Senator from Utah. His bill, the Don't Jab Me Act, would create a private right of action for any "aggrieved individual" to sue the Federal Government "for injuries sustained as a result of a COVID-19 vaccination mandate."

I know that the Senator is careful in his words. I would ask him to look carefully at that word "injuries." It is misleading.

COVID-19 vaccines are safe and effective. They were evaluated in tens of thousands of clinical trials. They meet the FDA's rigorous scientific standards for safety, effectiveness, and quality. They have undergone and will continue to undergo the most extensive, intensive safety monitoring in history.

In an extremely rare case that an individual suffers an injury, a harm, from a COVID-19 vaccine, there is a system in place to provide compensation. Under the Countermeasures Injury Compensation Program, a person can already seek to recover damages for physical injuries suffered because of COVID-19 vaccines.

The Senator from Utah's bill appears to go beyond compensating individuals for physical injuries caused by the vaccine. It lets people sue the government for "injuries sustained as the result of a COVID-19 vaccine mandate."

Now, what kind of injuries might there be?

Well, we surely don't know. The bill does not define the type of injuries that a person could sue for. The entire bill is two and a half pages of very vague language.

What we do know is that the bill, if enacted, would authorize a flood of lawsuits by individuals claiming that a vaccine mandate injured them in some physical, maybe nonphysical way. We don't know.

It is ironic. For more than a year, my Republican colleagues claimed the pandemic would create a tsunami of COVID lawsuits. Remember all of the times Senator MCCONNELL went to the floor and said: Hang on tight. The trial lawyers are just going to be hell-bent now, filing lawsuits all across America. There will be a tsunami of lawsuits.

Well, it never happened. Despite that fact, the Senator from Utah is apparently urging a new set of lawsuits to be filed.

I am a former trial lawyer. I made a living at it. When people have been harmed, I support their day in court, but liabilities laws need to be carefully calibrated to promote the right behavior and incentives. This short, vague bill does not even try to strike a balance between health and safety. It is a shot across the bow to entities that are using vaccine mandates.

Remember, courts have long rejected challenges to vaccine requirements imposed by public entities. And the Senator might take a look at his home State. In Senator LEE's home State of Utah, there are public actors, like Salt Lake Community College, the University of Utah, and Utah State University, that are using COVID vaccine mandates to promote health and safety.

And I want to show the Senate this chart because it tells an amazing story.

Remember the report about all the attorneys general who were going to file lawsuits, in keeping with the Senator's message, against Joe Biden for these mandates for these employees?

Well, we took a look at their State.

Twenty-four States threatened lawsuits against Joe Biden for the very reason stated by the Senator from Utah.

How are they doing compared to all the other States, the 26 States that didn't file a lawsuit?

Well, it turns out the infection rate for COVID-19 over the past 3 months is more than twice in those States as it is in the States not filing these lawsuits. Since mid-June, the death rate is almost three times the rate of those States that didn't file the lawsuit, and the vaccination rates are significantly lower.

So for those who have an idea about guiding the State to the right outcome, shouldn't public health and safety be important?

I am sure we all understand the issue of liberty and how important it is to America, but there was a word before liberty that the Founding Fathers used: life. Life.

These vaccine mandates are about saving lives in America, and it is for that reason that I object.

The PRESIDING OFFICER. The objection is heard.

Mr. LEE. Madam President, I appreciate the insight provided by my friend and distinguished colleague, the senior Senator from Illinois and the assistant majority leader.

I respectfully submit that this is about allowing people to obtain redress for, among other things, the awful Hobson's choice people are facing and are increasingly going to be facing as this mandate kicks in. It hasn't been issued yet. We still don't know what is in it. We still don't know his precise basis for the authority. We assume that he would have told us his precise basis for the authority if, in fact, it existed.

I have scoured the U.S. Code looking for authority for the President of the United States to implement this unilaterally, and I have found none. So it is very significant, therefore, that when you are going to put this kind of a Hobson's choice in front of the people, you ought to be able to at least have the decency to tell them what your source of authority is. He still hasn't done it.

If we assume that he is going to come up with one and that he is going to issue a mandate, that mandate is going to put a whole lot of people in a terrible position, forcing them to choose between getting a vaccine that, for whatever reason, they don't want and termination—between submission and poverty. That is unfair.

Now, look, I get the fact that a lot of us were and are enthusiastic and grateful for the vaccine. I have received the vaccine, as has every member of my family. I think the vaccine is a good thing. I also understand that there are people who feel differently. In some cases, there are people who have been advised by board-certified medical doctors not to get the vaccine based on the existence of one or more autoimmune diseases, past personal or family history, and their idiosyncratic reactions to other vaccines or to this vaccine. There are other people who might have religious or other sincerely held personal beliefs that might make this choice a really unfair one for the Federal Government to force upon them.

So, yeah, I am glad we have got the vaccine. I think the vaccine is good. I think the vaccine is helping a lot of people. But to tell every American that he or she must get this under penalty of losing a job, and then for the President, after acknowledging that he doesn't have authority, to mandate this for every American turns America's employers—all those with more than 99 employees—into the COVID-19 vaccine police for the entire country.

It is unjustifiable, even at a policy level, before we get to the obvious constitutional defects and the lack of any semblance of any statutory authority. So I am disappointed that we can't pass this one today. I will be back again tomorrow. I will continue to come back for weeks to come because the American people deserve better than this. They deserve not to have people in Washington, DC, purporting to make very personal healthcare decisions for them and conditioning their own private-sector employment on compliance with the dictate of one man in Washington, DC.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Madam President, I ask unanimous consent that Senator PETERS and I be allowed to continue to complete our remarks before the roll-call vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF ROBERT T. ANDERSON

Mr. BARRASSO. Madam President, the Senate is about to vote on the