

Idaho Committee On Federalism Poised For More Work Against Biden Vaccine Mandate



File photo of the Idaho Capitol Building in Boise

Idaho interim joint Committee on Federalism, a group formed in recent years to address the balance between state and federal constitutional issues, met Wednesday to hear testimony on the Biden Administration's COVID-19

vaccination mandates.

Earlier this month, the White House announced three groups would be required to be vaccinated: federal employees, employees of federal contractors — including workers at entities which participate in Medicare and Medicaid — and employees of companies larger than 100 workers.

Idaho's GOP leadership has threatened to sue the federal government over the requirements, one of many states which could take legal action.

While efforts by some legislators to reconvene the session and take up the issue have been unsuccessful, a few lawmakers and members of the public testified Wednesday in favor of resuming the session to tackle the issue.

"I look forward to getting back into session with you in the next two weeks — if not sooner," Rep. Barbara Ehardt (R - Idaho Falls) told the committee during public testimony.

Much of the public comment period featured statements against vaccine mandates and the vaccines themselves. Misinformation was common, including from Rep. Ron Mendive (R-Coeur D'Alene) who claimed vaccines were ineffective and promoted the use of hydroxychloroquin and ivermectin.

"This is a treatable disease," Mendive said. "And yet it's not

being treated. That's very disturbing to me."

The FDA reports serious heart rhythm problems associated with treating COVID-19 with [hydroxychloroquine](#) and it reports many others needing hospital care after self-medicating with the anti-parasitic drug [ivermectin](#).

Mendive also claimed that if the previous strain of COVID-19 had been allowed to spread across the population in 2020, "we'd have had herd immunity by now. It would have been done," he said.

As of this story's publication, Idaho Health and Welfare reports 2,687 deaths in Idaho due to COVID-19, and nearly 247,000 people infected. That means one of every 92 people infected in Idaho has died.

Between periods of public testimony, the committee invited guests to address the question: Does the federal government have the broad authority to require employees at large companies get a COVID-19 vaccination? The answer is complicated.

Deputy Attorney General Brian Kane questioned several aspects of the vaccine requirements, including if the federally-operated Occupational Safety and Health Administration (OSHA) has the authority to regulate workplace safety with such a wide ranging order.

"They have differing safety standards because their occupations subject them to differing standards," Kane said. "One of the big question marks as OSHA moves forward is, is COVID an occupational hazard or is it a hazard that affects everyone within the public?" Kane said.

Government mandates like the one requested by the Biden Administration are issued on an emergency basis due to the threat of a 'grave danger.' Kane said how courts interpret what is a 'grave danger,' is also key.

The actual text of the federal vaccine rule for businesses is not published yet, which Kane said makes it hard to address the issue affirmatively.

Eagle attorney Christ Troupis took a more definitive approach in his presentation to the committee.

"It is not going to be a popularity contest or a vote of the employers as to whether or not the mandate is constitutional," Troupis said. "It is unconstitutional, period."

His position relies on the current U.S. Supreme Court taking a dim view of [section 361\(a\)](#) of the Public Health Services Act, which allows government entities to regulate and require measures that could mitigate a threat to public health. Section 361(a) has also been used by the Centers for Disease Control and Prevention to try and extend the

eviction moratorium.

Troupis said the state doesn't necessarily need to wait for the courts to act.

"You need to get out and win the public relations war right now. You have the right to make any laws dealing with persons' medical information, and you have the right to say lawsuits can or can't be brought under state law and you can limit that," he told legislators. "By doing those things, I think you take a proactive stand and get in front of this, and I think that's what's necessary."

The committee also heard testimony from Legislative Auditor April Renfro, who said Idaho expects to receive around \$2 billion in federal Medicaid reimbursements in 2021. That money could be at risk if the state does not comply with the federal mandate.

The committee took no action Wednesday, though co-chair Rep. Sage Dixon (R-Ponderay) said lawmakers could be moving faster on the issue and "are probably headed in that direction."

The interim Joint Committee on Federalism meets again Sept. 28, with an hour of its day-long agenda devoted to federal vaccination mandates. The committee will meet again on the issue of vaccine mandates Oct 4.