

Biden putting Jackson's theory of executive power to the test

by Carl Golden

In his book "American Lion," a biography of President Andrew Jackson, author/historian Jon Meacham describes Jackson's philosophy of governing as presidential primacy. The occupant of the office, he felt, should be granted wide latitude and discretion in wielding executive authority.

As the only official elected by the nation at large, Jackson — the nation's seventh chief executive — believed the office was not an arm of government; rather, it was the heart of government.

In the wake of President Biden's extraordinary exercise of power — ordering some 100 million American citizens to accept vaccinations against the COVID-19 virus — Jackson's theory will be tested.

After months of resisting mandating a mass vaccination program, Biden placed the nation on a wartime footing, ordering private sector employers of more than 100 persons to require workforce immunizations or twice weekly testing for those who refuse. The Occupational Health and Safety Administration (OSHA) will administer the effort.

Violations would lead to fines of \$14,000 per case, and those who reject the vaccine and the testing regimen could presumably lose their jobs.

The scope of the order was breathtaking. Gone were months of suggesting, encouraging, recommending and urging, replaced by an order from the occupant of the highest office in the land.

The ink was still wet on his executive order when lawsuits were announced challenging the directive and arguing the president had exceeded his constitutional authority. Republican governors and members of Congress expressed outrage, crying that the president had trampled on constitutionally protected individual and privacy rights.

Much of the backlash involved accusations that the president and, by extension, Democrats were guilty of a concerted effort to accrue greater power and control over the American people and eroding historic freedoms.

Some were more cynical, arguing the administration was engaged in a "wag the dog" strategy, calling for a major policy step to distract attention from the disastrous withdrawal of the American military from Afghanistan, an issue which dominated news and political coverage for weeks and drove Biden's public approval rating into the 40% range.

Positioning the president as a leader in fighting the most serious public health crisis in a century was the admin-

istration's real goal, critics alleged, to head off becoming bogged down in a never ending, non-winnable debate over the botched withdrawal from Afghanistan.

The president struck back swiftly, challenging opponents to "have at it" if they chose to proceed in the courts.

With the country experiencing 150,000 new COVID-19 cases a day and 1,500 deaths daily, Biden said he concluded that dramatic action was crucial as the virus' Delta variant overwhelmed hospitals and medical facilities.

Biden accused governors and legislatures that prohibited mask wearing and vaccinations of a "cavalier attitude" toward children in particular, implying they were complicit in risking lives and blamed those who refused the vaccine for the out-of-control virus spread. Their refusal, he said, "has cost us all."

The public seems to agree with him, with a majority supporting a vaccination mandate for people in the workplace, on airplanes and public transportation, and in restaurants and entertainment venues.

The Republican opposition strategy rests on preserving individual freedom to decide medical care, while the administration has framed the debate around government's responsibility to act decisively to protect public health.

A presumed constitutional right to refuse a vaccine, the administration argued, does not translate into a constitutional right to expose others to a potentially lethal pathogen.

Biden, in effect, has asked the American people to choose between safety for themselves and their families and a desire to keep government out of their personal lives. A majority has opted for the former while softening their view of the latter.

The data has made the choice a bit easier: 40.8 million infections and 660,000 deaths in the United States since the pandemic's onset — both the highest in the world.

Some Republicans believe the vaccination mandate will harm Democrats in the 2022 midterm congressional elections, that the principles of freedom and a non-interfering government will prove stronger than concerns over a highly contagious but treatable infection.

Jackson left office 184 years ago, and whether his governing theory will be vindicated will likely be decided by the 21st Century judicial system.

Carl Golden is a senior contributing analyst with the William J. Hughes Center for Public Policy at Stockton University in New Jersey. You can reach him at cgolden1937@gmail.com.

Pay or punish the un-vaxed?

by Peter Funt

When society seeks to influence behavior, is it better to pay people to act a certain way, or to penalize them if they don't? The pandemic and the urgent need for COVID-19 vaccinations brings the question into focus.

American Airlines offers employees an extra day of paid vacation if they get the shots. Delta Airlines, on the other hand, warns employees they will be charged a \$200 monthly penalty on their health plan if they don't get jabbed.

Kroger, the nation's largest supermarket chain, gives employees \$100 for proof of vaccination. But professional basketball players employed by the New York Knicks, Brooklyn Nets and Golden State Warriors learned recently they will not be allowed to play in home games this season if unvaccinated, and face possible fines or loss of pay.

A few companies are literally trying it both ways. Walmart, the nation's largest private

employer, will require employees at its corporate offices to be vaccinated, while making it optional for in-store workers — but offering them \$150 if they choose to get the shots.

Much as I applaud the intentions of businesses and governments that offer monetary inducements for getting the shots, I think it's unwise. We don't pay motorists to stop at red lights, we fine them if they don't. Companies don't give bonuses to employees who refrain from harassing coworkers, they discipline the offenders.

Research into behavioral economics does show that incentives work in some cases. A study conducted by the Mayo Clinic found that participants in a weight-loss program lost more and stayed with the program longer when paid to do so. Researchers at Harvard Medical School got similar success in getting people to quit smoking.

In Canada a few years ago, private business partnered with government to operate "Carrot Rewards," a program

that essentially paid people to walk more. It utilized an app that measured steps and issued payoffs in the form of points used for merchandise. People walked so much that the funding ran out and the program folded.

For the most part, however, these reward-based programs are conducted among folks who wanted to change; the money reinforces their views rather than modifying them.

During the pandemic, government efforts to pay the unvaccinated have had only modest success. Ohio's "Vax-a-Million" lottery was among the more effective programs, at least for a few weeks, but other state and local payoffs have not fared as well.

One of my concerns with behavioral economics — whether orchestrated by business or government — is that such programs exert disproportionately greater pressure on the poor.

Walmart is essentially conceding that by offering \$150 to its lower-paid workers, while issuing a vaccination mandate to

higher-salaried employees for whom a cash inducement might be easier to ignore.

When it comes to encouraging COVID vaccinations, perhaps the ends justify almost any means. But since governments and businesses have the absolute right to require certain behavior — from paying taxes to wearing seat belts — there shouldn't be a need for bribes, or for cowardice among lawmakers and employers. Make the rules and enforce the penalties.

As more COVID variants emerge, there is reason to believe that one or two shots won't be enough. Annual boosters might be necessary. So then what? Employees who were paid to comply this year demand another dose of cash, or threaten to strike for higher vaccination pay?

Unfortunately, it will never be right to pay people to stop being wrong.

Peter Funt's new memoir, "Self-Amused," is now available at CandidCamera.com.

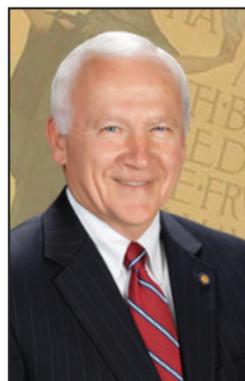


Sen. Yaw: Senate Committee Disapproves Wolf RGGI Tax on PA Energy Producers

HARRISBURG — The Senate Environmental Resources and Energy Committee today voted to disapprove a Wolf Administration regulation that imposes a tax on Pennsylvania energy producers by entering the state into the Regional Greenhouse Gas Initiative (RGGI), according to Sen. Gene Yaw (R-23), chairman of the committee.

"This is the most significant and devastating thing that has happened to employers in Pennsylvania in more than a decade," Senator Yaw said. "It is crushing to all businesses who rely on any form of energy and to our families who, according to estimates, will see their energy bills increase by 18 percent."

The committee voted 7-4 to adopt Senate Concurrent Regulatory Review Resolution 1, which disapproves a Wolf Administration regulation that paves the way for Pennsylvania to join RGGI, a collaboration of 11 Northeast and Mid-Atlantic states that sets a cap on total



carbon dioxide (CO2) emissions from electric power generators in their states.

"When Gov. Wolf announced his decision to join RGGI in 2019, the tax rate was \$5.20 per ton of CO2. Since then, the RGGI tax rate has increased 79 percent to \$9.30," Senator Yaw said. "DEP's so-called 'independent' models emphasized the RGGI tax rate would not surpass \$7 per CO2 ton until at least 2025."

The resolution now goes to the full Senate for consideration. The Senate has either 10 legislative or 30 calendar days — whichever is

longer — to consider the disapproval resolution. If approved, the resolution goes to the House chamber, which also has a 10 legislative or 30 calendar day window to pass the resolution and present it to the governor.

If the Governor vetoes the disapproval resolution, it will return to the Senate who may consider overriding the veto. Two-thirds of the Senate must support the resolution to override the veto. The measure then goes to the House where the same two-thirds vote is required.

"As a result of this unilateral decision, Pennsylvania coal plants will have to pay a 50-60 percent tax per MWh of electricity generated that coal plants in states like Ohio and West Virginia will never pay," Senator Yaw said. "Meanwhile, as the Governor embarks on his quest to eliminate all coal and many natural gas plants in PA, Ohio and West Virginia are moving forward with massive subsidies to ensure their coal and natural gas

plants continue to operate for as long as their useful life will permit."

On October 3, 2019, Governor Wolf directed the Department of Environmental Protection (DEP) to join RGGI with Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia.

To comply, power plants must purchase a credit or "allowance" for each ton of CO2 they emit. Pennsylvania would be the only state in the compact with a substantial number of coal or natural gas power energy production facilities and the only one to join the compact without legislative approval.

Lawmakers have strenuously opposed the Governor's edict since the beginning, citing that it overstepped the Administration's powers by usurping the legislature's exclusive powers to impose taxes and that the carbon tax would devastate local economies and cost thousands of jobs.

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