

Consequences of a Government Run Amok



By Paul Engel

January 17, 2022

- Are we watching while America transforms from a constitutional republic into a banana one?
- When did the American people consent to government ruling by edict and mandate rather than by legislation?
- What will be the consequences if the American people allow our elected officials to act as kings and queens rather than public servants?

Recently, a federal judge issued a preliminary injunction against Secretary of Health and Human Services, Xavier Becerra, enforcing new rules regarding COVID-19 “vaccine” and mask mandates in Head Start programs. While this is good news for liberty in America, it also hides a terrifying secret: More and more America is being run less like a constitutional republic but like a kingdom or an oligarchy instead, where those in positions of power merely dictate to the rest of us how we are to live our lives. The case *Texas v. Becerra* is not over and neither is the need of the American people to rein in the out of control government that resides in Washington, D.C.

On the last day of 2021, Judge James Wesley Hendrix issued his order enjoining Secretary Becerra from enforcing HHS’s Head Start mandates. As stated in the order, he did so because the court believes there is a substantial likelihood that the Head Start mandate is not within the scope of legislation that created Head Start, that HHS failed to follow proper rule-

making procedures, and that the mandates are arbitrary and capricious. While Judge Hendrix's order is limited to the State of Texas, it is another proof point of the dictatorial nature of the federal government. For that, Judge Hendrix should be praised.

However, as I was reading the judge's order, I realized we are here because for decades the American people have stood by while those in Washington, D.C. crept ever more toward to tyrannical and dictatorial style of governing. Even worse, many Americans were either complicit in the bribery that is Head Start, or conspired with it because it made them feel good for "doing something" while not doing anything except to steal from the American people.

Head Start Program

An outgrowth of President Johnson's "war on poverty", the Head Start program had a laudable goal.

The Head Start program began as an eight-week demonstration project designed to help break the cycle of poverty, It provided preschool children from low-income families with a comprehensive program to meet their emotional, social, health, nutritional, and educational needs.

Head Start History – U.S. Dept. of Health & Human Services

Why is it, whenever anyone says "it's for the children", so many Americans are unwilling to challenge government overreach? I'm not saying that a "head start" program is good or bad, but it is outside of the limited powers delegated to the United States by the Constitution. Head Start, and now Early Head Start are federal programs government by the Head Start Program Performance Standards:

The Head Start Program Performance Standards (HSPPS), the regulations governing Head Start programs, were originally published in 1975. In 1995, the first Early Head Start grants

were awarded to serve low-income pregnant women and children ages birth to 3. In 1998, the Head Start program was reauthorized to expand to full-day and full-year services. The Head Start program, to include Early Head Start, was most recently reauthorized in 2007 with bipartisan support.

Head Start History – U.S. Dept. of Health & Human Services

There is nothing in the Constitution that delegates to the United States the power to regulate education. It isn't interstate commerce and it's not for the general welfare of the United States. This program is designed to benefit a segment of society, which I've already said is a laudable goal, but since this power was never delegated to the United States, it remains with the states. That makes the Head Start program, and those who voted for it, guilty of embezzlement:

The fraudulent conversion of another's property by a person who is in a position of trust, such as an agent or employee.

Embezzlement – The Free Legal Dictionary

They have converted your money into this program without your consent. They did so willfully, in order to gain the image of being charitable for the purposes of improving their chances at re-election or the election or re-election of their colleagues. The federal government now uses their ill-gotten gains to extort state and local officials to comply with their desires.

Head Start Mandates

The Department of Health and Human Services (HHS) offers grants to schools, nonprofits, and other local organizations to run Head Start programs. ...

In response to the COVID-19 pandemic, the Office of Head Start (OHS) allowed local providers to adjust their services as necessary depending on community conditions and needs.

[Texas v. Becerra Memorandum Opinion and Order](#)

Did you notice the shift? First, HHS offers grants to organizations that run Head Start programs, then they claim the power to allow those programs to adjust their services. This is where HHS's Head Start went from simple embezzlement to extortion and even racketeering.

Traditionally, obtaining or extorting money illegally or carrying on illegal business activities, usually by Organized Crime.

[Racketeering – The Free Legal Dictionary](#)

By “allowing” the programs to act a specific way, HHS was claiming the authority to regulate a state or local education program directly. Notice, according to the case, HHS didn't simply state that their grants would only be available to those who comply with their wishes, they demand that anyone who has taken their money comply with their new “rule”.

Head Start grant recipients are required as part of this IFC [Interim Final rule with Comment] to maintain records on staff vaccination rates. Additionally, Head Start programs are required to develop their own written SARS-CoV-2 testing protocol for current infection for individuals granted vaccine exemptions.

[Vaccine and Mask Requirements To Mitigate the Spread of COVID-19 in Head Start Programs](#)

While I could not find any specific language in HHS's rule, my guess is that not only would future grants be withheld, but suits may be filed for the return of existing grants for non-compliance. The question before this court was simple:

It is undisputed that an agency cannot act without Congressional authorization. Thus, the question here is whether Congress authorized HHS to impose these requirements.

HHS claims that the mandates are authorized as “program performance standards” related to: “administrative and financial management,” “the condition . . . of facilities,” or “such other standards” the agency “finds to be appropriate.”

[Texas v. Becerra Memorandum Opinion and Order](#)

Before the question of Congressional authorization should be the question of a Constitutional one. Since the judge apparently did not ask this question, let us set it aside temporarily and look at what Congress authorized HHS to do. As is so often the case, the devil is in the details. For example, in this suit HHS claims that the mandates are authorized as “program performance standards”. However, the law is a bit more detailed.

(a)(1)The Secretary shall modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs under this subchapter,

[42 USC §9836a](#)

Since the Secretary cannot simply authorize changes, they must be done by regulation. Federal law requires that such regulations go through a detailed process to ensure not only the legality, but to gather the public's sentiment on the idea. Next is the question of the Secretary's power over the “administrative and financial management” of Head Start Programs. Included in the list of the Secretary's powers to modify are:

(C) administrative and financial management standards;

[42 USC §9836a](#)

This means the law did not give the Secretary the authority to regulate the administrative and financial management of Head Start programs, only the standards under which they work. You may be asking yourself, what's the difference? Under the HHS's

view in this suit, the Secretary can regulate the actual management of these programs, where Congress only allowed him to set standards for administration and financial management.

(D) standards relating to the condition and location of facilities (including indoor air quality assessment standards, where appropriate) for such agencies, and programs,

[42 USC §9836a](#)

HHS claims the Secretary has the authority to issue these mandates under subsection (D) of the law, but that deals with the condition and location of the facility, not to impose medical standards for the students and staff. Of course, the agency's last trump card:

(E) such other standards as the Secretary finds to be appropriate.

[42 USC §9836a](#)

Game, set, and match, no? If the Secretary finds the standard appropriate, he can do what he wants. Except the law also includes things the Secretary must consider when developing those standards.

(2) Considerations regarding standards

In developing any modifications to standards required under paragraph (1), the Secretary shall-

(A) consult with experts in the fields of child development, early childhood education, child health care, family services (including linguistically and culturally appropriate services to non-English speaking children and their families), administration, and financial management, and with persons with experience in the operation of Head Start programs; ...

(C)(i) review and revise as necessary the standards in effect under this subsection; and

(ii) ensure that any such revisions in the standards will not result in the elimination of or any reduction in quality, scope, or types of health, educational, parental involvement, nutritional, social, or other services required to be provided under such standards as in effect on December 12, 2007;

[42 USC §9836a](#)

I don't know about you, but when the CDC's data shows that children under 5 are less than 3% of the cases and have a statistically zero percent death rate, I wonder what experts Secretary Becerra has been consulting. And since these mandates reduce parental involvement, along with social, educational, and health quality, I think the Secretary has missed the boat on this one.

Oral Arguments

Before the judge made his decision, both parties had a chance to argue their cases.

During oral argument, counsel for the defendants made multiple concessions relevant to the Court's analysis. First, she noted that the vaccine and mask mandates are not "health services" within the meaning of the Head Start Act. Second, she explained that the agency does not assert that the Rule was or could be authorized under 42 U.S.C. § 9836a(a)(1)(A), which are "performance standards with respect to services required to be provided, including health . . . services." Third, while she continued to argue that the Rule could be authorized as an "administrative" standard under subsection (C), she admitted that it could not qualify as a "financial management standard." And finally, she admitted that, while other health services made available to children by Head Start are "strongly encouraged," this is the first time that Head Start has ever mandated a medical procedure as a precondition to new or ongoing employment. The Rule is unprecedented, although counsel asserted that it is justified by an unprecedented

pandemic.

[42 USC §9836a](#)

In short, even the attorney for Health and Human Services could provide no other justification of the rule other than we are in an unprecedented pandemic. While COVID-19 has spread globally, I would dispute the statement that it's "unprecedented", since there are many other viruses around the world with a medical impact as great and greater than SARS-COV-2.

Texas' Overreach

Things, however, did not all go Texas' way.

Counsel for Texas likewise made an important clarification during argument. Regarding Texas's request for a nationwide injunction, he admitted that the Fifth Circuit recently limited a nationwide injunction and that relevant precedent on the topic appeared inconsistent. He agreed that the great majority of evidence before the Court was limited to the mandate's effect on Texas and school districts in Texas. He explained that Texas's request for nationwide relief was not based on case law, but rather the Administrative Procedure Act, which instructs courts to set aside unlawful agency actions.

[42 USC §9836a](#)

While claiming that because HHS violated the Administrative Procedures Act, the mandate was not only a violation in the State of Texas but nationwide. Since courts have shown a slavish devotion to case law rather than the Constitution, this judge limited the scope of his injunction to Texas.

Conclusion

The court found that the State of Texas demonstrated a substantial likelihood they would win the case on the merits

of four specific claims. First, that Secretary Becerra issued the rule without statutory authority. Second, that Secretary Becerra did not follow proper rule-making procedures. Third, that the rule is arbitrary and capricious because it is unreasonably over-broad without reasonable explanation. Lastly, HHS could not show that there was sufficient threat of irreparable harm for them to receive relief from the injunction.

Those in Texas should be happy, at least for now, that their children and the staff at Head Start programs will not be subject to the same draconian regulations as other aspects of our society. Parents won't have to choose between having their children experimented on or utilizing a program funded by their tax dollars. Staff will not have to choose between being a guinea pig or being unemployed.

I believe all Americas should learn a very important lesson from this. When you use government to do what it is not authorized to, you open a Pandora's box of tyranny and subjugation. Before we allow our employees in government to approve legislation, we should first imagine it being used by our most hated enemies against us. We should look at how it may be warped and twisted into a power beyond what we intended. Only then, when we are comfortable with the possible outcomes, should we approve its passage. Otherwise, the legislation needs more work.

© 2021 Paul Engel – All Rights Reserved

E-Mail Paul Engel: paul@constitutionstudy.com