

# Government Credibility: Joe Biden Hands Pandemic Policy Opponents “Leg Up” in Legal Disputes

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*President Joe Biden's litigation opponents are seizing on his remark that the pandemic is "over" as they challenge policies adopted in response to the public health crisis.*

Republican attorneys general in six states [noted](#) Biden's comment to "60 Minutes" last month in a Sept. 29 suit challenging his plan to eliminate federal student loan debt for more than 40 million Americans. Similarly, a federal appeals court judge [asked](#) during oral arguments on Sept. 21 how it could impact a case challenging the government's vaccine mandate for federal contractors.

Litigants say Biden's remark bolsters their argument that the administration is using the pandemic purely to service his political agenda.

"It is a huge game changer for all of us," said Daniel Suhr, managing attorney at the Liberty Justice Center. The group represented parties in cases challenging the vaccine mandate for private sector workers, which the Supreme Court blocked in January, and the vaccine mandate for Head Start teachers, which a federal judge in Louisiana permanently [blocked](#) in 24 states on Sept. 21.

The government has been arguing judges need to defer to its public health judgment in these and other cases and Suhr said "that's just no longer true if the president is saying the pandemic is over."

## Pandemic Protocols

During the interview, Biden acknowledged Covid-19 is still a problem that the US is working on but said the pandemic is over. Sara Rosenbaum, a health law and policy professor at George Washington University, contends he was talking as a person not as the president.

"He was not declaring the public health emergency over, which is a technical legal

matter that must be done according to certain procedures and must be done by certain officials, and that has not happened,” she said. “What he was trying to say, of course, is having to live in pandemic conditions, meaning as another American citizen living in pandemic conditions, is past us.”

Still, Rosenbaum acknowledged some courts may see it differently.

“A court that is grasping for reasons to rule for the plaintiffs in these cases will hold that somehow the president made law and there’s just no basis for finding that the president made law,” she said.

The White House didn’t respond to a request for comment. But Biden’s press secretary, Karine Jean-Pierre, and his chief medical adviser, Anthony Fauci, [sought to clarify](#) Biden’s remark days later. While speaking at the Atlantic Festival, Fauci said Biden was making the point that we’re in a very different place in the pandemic but that his next words were “we still have a problem with Covid.”

Courts have previously signaled they’re paying attention to what’s said by administration officials and staff.

In November 2021, the New Orleans-based US Court of Appeals for the Fifth Circuit cited a retweet by White House Chief of Staff Ron Klein in its [reasoning](#) for reaffirming its decision to block the Occupational Safety and Health Administration mandate that required workers at companies with more than 100 employees to get the Covid-19 vaccine or test weekly.

That tweet, originally posted by an MSNBC anchor, said, “OSHA doing this vaxx mandate as an emergency workplace safety rule is the ultimate work-around for the Federal govt to require vaccinations.”

## Government Credibility

The Justice Department is fighting in the Atlanta-based US Court of Appeals for the Eleventh Circuit to have the Centers for Disease Control and Prevention’s (CDC) mask mandate on planes and other mass transit reinstated. While Biden’s comment is not part of the legal record in that case, the attorney for the Health Freedom Defense Fund and two Florida residents challenging the mandate said it helps his clients’ case.

The president’s comment “adds to the impression that this Administration does not regard COVID-19 as a serious threat to public health,” Florida lawyer Brant Hadaway said in an email.

The DOJ declined to comment. In court filings, the agency argued preventing the spread of communicable disease falls squarely within the CDC’s statutory powers.

“Indeed, prevention is so central to the CDC’s mission that Congress took the trouble to amend the agency’s official name to add the words ‘and Prevention,’” DOJ said.

Beyond masking mandates and vaccine requirements, Biden is relying on the pandemic for other major policy priorities. In August, he cited the public health crisis as justification for his plan to relieve federal student loan debt. That was backed by a [legal opinion](#) from DOJ declaring the Higher Education Relief Opportunities for Students Act of 2003 gives the education secretary the power to provide this relief in a national emergency.

The six states challenging the debt relief plan cited Biden’s “60 Minutes” interview in their complaint as proof the administration’s reliance on Covid-19 “is disingenuous—a mere pretext and post hoc rationalization.”

“Biden’s the president of the United States,” said Robert Henneke, executive director and general counsel at the Texas Public Policy Foundation, which has its own case challenging the government’s vaccine mandate for federal workers.

“What he says is policy for the country and given that the basis for this student loan forgiveness policy is premised on the justification of the continued Covid disaster that the president said doesn’t exist anymore, that, I think, is going to be something the courts will factor in.”

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