Institution vs. Constitution: Examining the disastrous impact COVID mandates had on the US military

Description

WORLD : In early 2020, life around the globe changed when a pandemic erupted out of Wuhan, China. The impacts were significant, with governments electing to shutter economies and restrict freedom of movement in an attempt to keep their populations safe.

At the time, little was known about the virus or how to mitigate its health risks. Many individuals were willing to accept these restrictions as temporary measures to help “stop the spread.”

As “two weeks” became two years, most of the mitigation measures were ultimately mandated to military personnel, introducing a constitutional crisis between safety and personal liberty.

After three years, the time has come for us to take an honest, retrospective assessment of this “black swan” event and the impact, if any, on the constitutional rights of service members.

Within the Department of Defense (DoD), COVID-19 is attributed with causing the deaths of 96 service members.[1] The loss of these service members is unquestionably tragic.

Yet, in many ways the American people could look at this relatively low number as a triumph due, in part, to the mandated mitigation measures. After all, with a total of 453,456 documented COVID-19 infections, a survivability rate of 99.9997% should seem like a huge win for DoD leaders who prioritized the health of the Joint Force.[2]

However, this survivability rate does not appear to differ significantly from the pre-vaccine survivability rate of the rest of the U.S. military-aged population, with all 25-34 year-olds at 99.9943% and all 35-44 year-olds at 99.984% survivability respectively.[3] With such a minimal return, particularly for military-age persons, the decision to mandate nearly every possible health mitigation was not without risks.

Along with the mandated mitigation measures came a legal and constitutional crisis, unprecedented in scope in U.S. military history. If ignored and left unresolved, this constitutional crisis will continue to negatively impact the Joint Force and the future of the nation—long after the COVID-19 pandemic has become a distant memory.

This article will not analyze the COVID-19 health risks, the science behind the various mitigation measures, nor the emerging evidence of post-vaccine injuries.[4] Rather, this article will focus exclusively on the law, the Constitution, and the obligation service members have to the Constitution.

It is the concerted opinion of the authors that the United States military – until recently America's most trusted institution[5] – failed a fundamental ethics test.

Yet, this article will not impugn the honor nor question the good-faith efforts of decision makers who fought valiantly to keep subordinates healthy.

Regardless of any good intentions, however, this article will demonstrate that institutions within the DoD violated the law in two primary ways in the course of implementing the COVID-19 mandates.

The first of these violations was the denial of informed consent. The DoD explicitly violated specific laws under Title 21, which were designed to protect informed consent rights, as well as the inherent rights to due process under the Fifth Amendment and bodily integrity rights under the Tenth Amendment.

Secondly, the DoD violated the free exercise of religion. This was done by unequivocally violating the Religious Freedom Restoration Act under Title 42, along with inherent religious freedom rights protected by the First Amendment.

After conducting the required legal crosswalk and analyzing these violations, this article will discuss what the implications of these violations are to the Joint Force.

Finally, recommendations will be presented for how decision makers can begin the restoration process that will help rebuild trust with service members and the American people.

Informed consent & public health emergencies

Under natural law, the Constitution, Title 21, and the principles established in the Nuremberg Code, human persons may not be forcibly medicated or medically experimented on without consent.

This principle, referred to as "informed consent," applies to all Americans, including service members. This principle, and the rights it protects, cannot be stripped in peacetime or in war. Even during a public health emergency, informed consent is still required, regardless of the severity of that emergency.

In fact federal law, as detailed in 21 USC § 360bbb-3, explicitly covers public health emergency situations (such as the COVID-19 pandemic), and permits the Secretary of Health and Human Services to declare a public health emergency and approve products for emergency use that have not been "approved, licensed, or cleared for commercial distribution" by the FDA, but that may provide some health benefit.[6]

The law describes these products as “emergency use” products, “unapproved products,” or, for the purposes of liability protections under the Title 42 Public Readiness and Emergency Preparedness (PREP) Act, “covered countermeasures.”[7]

Emergency Use Authorizations (EUA) issued by the FDA under the authority of the Secretary of Health and Human Services can then “authorize the introduction into interstate commerce, during the effective period of [the] declaration…a drug, device, or biological product intended for use in an actual or potential emergency.”[8]

The applicable informed consent law, 21 USC 360bbb-3, details the conditions under which an emergency use product (i.e. unapproved product) may be administered to any recipient. In the required conditions section of the law, it specifies that the potential recipient is required to be informed of each and all of the following;

These conditions, required by federal law, apply to all Americans. Any pharmacist, doctor, or nurse who administered an emergency use product to any American citizen were required to inform patients of the possible risks of the product, as well as the patients’ right to accept or refuse the product.

How well these medical professionals performed their legally required informed consent duties as related to COVID-19 risks from medical devices and injections is a topic for a later study.

For the purposes of this article, we will focus on the military application of the third requirement that the recipient is informed of the right to accept or refuse the product.

The right to accept or refuse a medical intervention, medical device, pharmaceutical, or any other biological product is a fundamental human right which flows from natural law.

This fundamental right, protected by the U.S. Constitution, is what differentiates human beings from experimental test subjects, as it relates to bodily integrity rights.

There is only one law related to informed consent that differentiates between laws that cover all Americans and laws covering service members specifically.

This law is 10 USC §1107a, and with it, Congress gave very limited authority to the President of the United States to be employed in the event of a public health emergency or a domestic emergency related to attack with a biological, chemical, radiological, or nuclear agent.

It is important to understand the exact language of the Presidential authority designated by this law. 10 USC §1107a specifies that “in the case of the administration of a product authorized for emergency use…to members of the armed forces, the condition…designed to ensure that individuals are informed of an option to accept or refuse administration of a product, may be waived only by the President only if the President determines, in writing, that complying with such a requirement is not in the interest of national security.”[10]

This means that for national security reasons, the President may only waive the requirement that service members be informed of their right to accept or refuse an emergency use product.

For example, if the U.S. comes under a chemical-agent attack and a potential counteragent can be

rapidly developed, then authorized for Americans under emergency use, the President can then waive, in writing, the government's requirement to inform service members of their fundamental right to refuse the product.

Just like Miranda rights, however, not informing an individual of their rights does not mean that the rights can be stripped or somehow do not exist.

To the contrary, under no circumstances are service members' rights to bodily integrity and informed consent stripped by either the Presidentially authorized removal of the requirement to inform them of such rights, or by the unlawful failure to properly execute the legally required informed consent.

The DoD had a different interpretation of 10 USC §1107a, and a lawsuit related to both 10 USC §1107a and mandating EUA products was filed in early October 2021 on behalf of service members.[11] In a preliminary federal court ruling on November 12, 2021, the judge wrote that the "DoD's interpretation of §1107a is unconvincing."[12] Unfortunately this case never made it to a final ruling.

The DoD sought to get this case dismissed multiple times for multiple different reasons including by asserting that the plaintiffs failed to state a claim and asserting that the court lacked jurisdiction.[13]

Once the 2023 National Defense Authorization Act rescinded the COVID-19 injection mandate, the DoD was finally successful in getting this case dismissed due to the mandate no longer being in place.

To pick up where this case left off in the fight for individual rights related to both EUA products and 10 USC §1107a, other cases have been filed, including three class action lawsuits representing tens of thousands of service members.[14] These three cases are still active, despite the DOJ seeking to dismiss each case shortly after being filed.[15]

It is also important to note that regardless of anyone's interpretation of 10 USC §1107a, no presidential waiver related to COVID-19 mitigations has ever been signed by any president.

Because this waiver was never granted, the full rights related to being informed about COVID-19 risks, benefits, and the right to refuse were never altered in any way.

Service members always had, and continue to have, every informed consent right related to the receipt of emergency use products. They also, of course, retained the right to refuse these products.

The military application of informed consent

When the COVID-19 shots were first made available to the American public in late 2020, they were only approved under an emergency use authorization.

Even though the shots were not yet mandatory during this period, service members were highly encouraged to receive the COVID-19 injections, and even subjected to significant coercion to accept these EUA products by their leadership.[16] Secretary of Defense Lloyd Austin demonstrated that the DoD understood this principle and the statutory rights of service members related to informed consent.

On August 9, 2021, Secretary Austin issued a memorandum in which he acknowledged that as long as the injections remained unlicensed by the FDA, a mandate of the products could only be done under

the President's authority.

In that memo Secretary Austin stated, "I will seek the President's approval to make the vaccines mandatory no later than mid-September, or immediately upon the U.S. Food and Drug Administration (FDA) licensure, whichever comes first."[17]

It was not until August 23, 2021, that the FDA licensed Comirnaty, the Pfizer developed COVID-19 injection. Based on this licensure, Secretary Austin issued guidance the next day to begin mandatory vaccinations.

The guidance from Secretary Austin on August 24, 2021 specified that "Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance."[18]

His August 24, 2021 memo also noted that receipt of an emergency use authorized product, even after the mandate, was still voluntary. However, in their misguided zeal to compel compliance with pressures exerted from above, commanders began a mandatory vaccination campaign without regard to the licensure status of the available products.

In short, they turned a blind eye to the law, and in so doing forced and coerced hundreds of thousands of service members to take the shot or face severe administrative action that often came with devastating financial consequences.

Problems with the military "vaccination-campaign" began almost immediately as the fully licensed Comirnaty was not to be found anywhere within the military supply system or at any military treatment facility.

On September 13, 2021, three weeks after the initial licensure of Comirnaty, the National Institute of Health (NIH) under the authority of the Secretary of Health and Human Services announced that "Pfizer does not plan to produce any [Comirnaty] product…while EUA authorized product is still available and being made available for U.S. distribution.

"[19] With nothing but COVID-19 Emergency Use injections lining the shelves, and no prospect of receiving the fully-licensed COVID-19 product, DoD officials elected not to rescind or pause the mandate.

Instead, these officials issued a memorandum a day after the NIH announcement in which they attempted to equate the EUA product with the approved-but-never-produced Comirnaty product.[20]

Citing nothing more than an FDA Q&A website, Assistant Secretary of Defense Terry Adirim declared, "these two vaccines are 'interchangeable' and the DoD health care provider should 'use doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine.'"[21]

After this memorandum, DoD officials began to treat the EUA product as if it were the fully-licensed product. Service members who exercised their Title 21 right to decline the product were treated as if they disobeyed a lawful order.

Administrative actions then began in earnest, including involuntary separations and discharge

characterizations that were less than honorable.

Treating an EUA product as interchangeable without fulfilling all the legal requirements to establish interchangeability is a separate violation of federal law governing the approval of biological products and was apparently done to cover-up the ongoing violation of informed consent requirements.

The law governing the requirements for interchangeable biological products is 42 USC §262(k), which specifies requirements that must be followed before a product can be declared interchangeable.

Most significant of these requirements is that the Secretary may not declare a product interchangeable "until the date that is 12 years after the date on which the reference product was first licensed."[22]

Since the Comirnaty license was approved by the FDA on August 23, 2021, after adding the legally required 12 years, no product can be declared interchangeable with Comirnaty until August 24, 2033.

By not fulfilling the 42 USC §262(k) interchangeability requirements, especially the legally required 12-year wait, the subsequent DoD declaration of interchangeability as the legal basis for mandatory EUA product receipt unambiguously exposed the unlawful bait-and-switch they used to coerce vaccination at all costs.

The free exercise of religion

As hundreds of service members began raising alarms about the violation of informed consent, tens of thousands more were informing their commands that the receipt of a COVID-19 product was a violation of their conscience and religious freedom.

There were nearly 25,000 religious accommodations filed by service members in response to the COVID-19 vaccine mandate by February 2022, according to federal court records.[23]

ike the principle of informed consent, an individual's worship and religious expression rights are protected by specific statutes of federal law including the Religious Freedom Restoration Act and are specifically enumerated in the Constitution.

According to the First Amendment, Congress shall make no law prohibiting the free exercise of religion.

The Religious Freedom Restoration Act, 42 USC § 2000bb, specifies that the government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability [such as a vaccine mandate], except as provided in subsection (b)."

As detailed in Subsection (b), the only exception to the principle that the government shall not burden the individual's free exercise of religion is that the government must "demonstrate that the application of the burden to the person – (1) is in the furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."[24]

The law also specifies that the term "demonstrates" means to "meet the burdens of going forward with the evidence and of the persuasion."

Essentially, the government—not the individual—has the obligation to demonstrate the compelling government interest and that the means chosen are the least restrictive means available.

The burden of proof is therefore on the government—not the individual—if the individual stands upon their First Amendment religious freedom rights.

As demonstrated through multiple court rulings, several of which are discussed later in this article, vague DoD references to military readiness or force health do not count as “evidence” that meets the government’s burden of proof under the law to demonstrate a compelling government interest that outweighs each individual’s rights.

To emphasize this point again, the burden of proof is on the government not the individual.

Instead of adjudicating each religious accommodation request and proving both 1) that the government had a compelling interest that outweighed the rights of the individual and that 2) the means used were the least restrictive, officials elected to essentially blanket-deny nearly every single religious accommodation request made. The military services even created processes that documented their violations of federal law and the Constitution in this area.

The Navy, for example, created a Standard Operating Procedure (SOP) that utilized a template denial for every religious accommodation request filed by Navy sailors.[25] The template denial was generated, routed for review, and then submitted for approval to the adjudicating official before the SOP ever directed a reviewer to open and read the religious accommodation request.[26]

Similarly, the Coast Guard developed a digital tool known as the Religious Accommodation Appeal Generator, which automated the process of generating denials and produced pre-determined responses based on what the requester included in their accommodation request.[27]

Similarly, the Air Force engaged in unlawful blanket denials, with only eight approvals out of 12,623 religious accommodation requests submitted.[28] While the aforementioned religious accommodation requests were being patently rejected, non-religious exemption requests received the opposite treatment with a total of 3,827 approvals of medical and administrative exemption requests.[29]

According to a declaration filed in federal court, “[Secretary of the Air Force] Kendall gave directives to Commanders, through official and/or unofficial channels, that religious accommodations were not to be granted to the COVID-19 vaccination policy.”[30]

These violations against service members’ First Amendment rights resulted in multiple federal court rulings confirming that violations of the law had indeed occurred.

These rulings froze the unlawful separation of service members when the services refused to halt these separations on their own. In a ruling against the Navy, a federal judge noted that the “Navy provides a religious accommodation process, but by all accounts, it is theater…It merely rubber stamps each denial.”[31]

In a separate ruling against the Air Force, which was expanded to a class-wide injunction, a different federal judge stated that “due to the systemic nature of what the Court views as violations of Airmen’s constitutional rights to practice their religions as they please, the Court is well within its bounds to

extend the existing preliminary injunction to all Class Members."[32]

In a ruling against the Marine Corps, a third federal judge went so far as to make the connection that the compelling government interest might actually be best served by retaining service members that the DoD was attempting to separate in light of the "current state of international turbulence and danger," as well as the "difficulty in recruiting equivalent replacements."[33] The judge went on to state:

For the past two years, the Marines serving in the Marine Corps have ably discharged their duties. Almost all served at the onset of the pandemic and served successfully during peak jeopardy in the pandemic and before any vaccination against COVID-19 existed…The record fails to demonstrate any meaningful increment of harm to national defense likely to result because these Marines continue to serve—as they have served—unvaccinated.[34]

Readiness impacts from competing principles

During this period, two principles were placed in competition that, ideally, should never be in competition. The principle that military members follow orders was placed in competition with the oath military members take to support and defend the Constitution.

The fulcrum in this competition comes down to the law. Service members have an obligation not to simply follow all orders, but to follow all lawful orders.

Regarding unlawful orders, service members actually have an obligation, confirmed by multiple appellate court rulings, to disobey and resist any order that a "man of ordinary sense and understanding would know to be illegal."[35]

The COVID-19 injection mandate was a complicated issue, but there was significant pushback and internal questions about the lawfulness of the order.

When significant legal concerns were raised about the COVID-19 mandates, decision makers apparently assumed lawfulness and prioritized defending the institution, rather than prioritizing defense of individual constitutional rights—as their oaths to the Constitution required.

In hindsight and considering the court rulings that proved violations of the law, the proper move would likely have been to pause the mandates for further study of the related legal principles.

Instead, officials elected to push forward on their initial assumption of lawfulness and began treating those who declined the COVID-19 injection as having disobeyed a lawful order.

The services then began discharging thousands of service members with plans to discharge the tens of thousands more who had ultimately stood on their constitutional and statutory rights to decline the COVID-19 products.

Before the courts forced a halt to these administrative discharges, the services were able to complete the separation processing of over 8,400 service members.[36]

The Joint Force relies on service manning capacities to fulfill Combatant Commander manpower requirements and therefore both the health risks and the discharges should have been a deep concern.

While the services may have been able to absorb the loss of the 96 service members whose deaths were attributed to the virus, when this was compounded by the discharge of 8,400 more, it became apparent that DoD policies were introducing significant risks to manning the force.

In hindsight, these leadership decisions appeared to embody the old adage “a penny wise and a pound foolish.” Given the extremely low mortality rate in the active duty service member age group, this is perhaps the most egregious example of risk aversion in recent military history.

‘I solemnly swear to support and defend… the institution’

The federal government has trampled on the rights of its citizens before. When confronted with such abuses, decision makers have often tended towards protecting the reputation of the institution rather than the rights of the individuals harmed.

This tendency, from which the DoD is certainly not immune, undermines trust and prioritizes ideals inconsistent with the Constitution and the rights enshrined therein. This section will briefly review three historical examples that demonstrate the negative effects of placing the institution before the Constitution.

Institutional loyalty case 1: The Tuskegee Experiment

In one of the most horrendous American examples of medical experimentation gone awry, we will examine the governmental misconduct, and associated cover-up, perpetrated on a group of innocent and unwitting U.S. citizens decades ago.

In 1932, the CDC initiated a syphilis study on African American men, in Tuskegee, Alabama. In this study, CDC scientists intentionally denied the subjects informed consent, and lied to them about what they were being treated for so that they would not seek treatment elsewhere.

Once penicillin was identified as nearly 100% effective against syphilis in the mid-1940s, the CDC then denied penicillin to the Tuskegee patients in order to observe the untreated spread and course of the disease.[37]

A new public health employee became aware of the study by accident and immediately identified the unethical and illegal nature of the study.[38] He attempted to bring the study to the attention of CDC officials and his own supervisors but was ignored.

After years of fighting government officials’ intent on protecting the institution and their own medical study, this individual finally turned whistleblower and went to the press with the information about the Tuskegee Experiment.[39]

Despite numerous deaths of Tuskegee men under study and clear violations of constitutional rights, it was only the public scandal and institutional embarrassment spurned on by a whistleblower’s revelation of the study in Washington Star reporter Jean Heller’s article, that finally forced CDC decision makers to shut down the Tuskegee Experiments in 1972.[40]

It took forty years to stop it, and it would not have been stopped at all had it not been for the moral courage of one whistleblower.

Institutional loyalty case 2: The My Lai Massacre

The aftermath of the My Lai massacre provides another example of misplaced loyalties when Army officers attempted to cover up war crimes committed by American soldiers.

On May 16, 1968, soldiers from the 11th Infantry Brigade, 23rd Infantry Division, murdered innocent non-combatants consisting of over 500 men, women, and children. Atrocities were committed against many of these victims before they were killed.[41]

The Army, through criminally complicit leaders and an intentionally lackluster Inspector General investigation, kept this heinous act concealed from political leaders and the American people until a former soldier turned whistleblower wrote letters to the Pentagon, the White House, and Congress ultimately forcing the Army to address these war crimes.

A parallel investigation into the cover-up was conducted by Lieutenant General William Peers in which he concluded that “at every command level from company to division, actions were taken or omitted which together effectively concealed from higher headquarters the events which transpired” and that “efforts to withhold information continue to this date.”[42]

General Peers identified 30 individuals who failed to report or fully investigate the massacre, 14 of whom were charged with crimes.[43] Again, without a whistleblower and the threat of public embarrassment, the decision makers responsible may have gotten away with prioritizing the institution over the Constitution and over basic human rights.

The price of forgetting our foundational moral, legal, and ethical obligations can bankrupt public trust and, more importantly, destroy a nation.

Institutional loyalty case 3: The Red Hill Environmental and Public Health Disaster

A more recent example of the institution-first mentality was observed in the Navy’s actions during the environmental disaster that occurred in Hawaii at the Navy’s Red Hill Fuel Storage facility.

The facility, constructed in the 1940’s, suffered a major fuel leak of 27 thousand pounds of fuel in 2014.[44] From that time until late 2021, several more leaks would occur, including a 14-thousand-pound fuel leak on November 22, 2021, as well as numerous operations and maintenance violations.

Transparency was not a priority for the Navy even as local residents began to experience significant health concerns.[45] Prioritizing the institution over the legitimate health concerns of locals, a Navy official attempted to reassure residents that their drinking water was still safe to drink despite having no data confirming that assertion.[46]

Ultimately, thousands of residents were inflicted with symptoms ranging from rashes and nausea to tremors, twitching, and brain impairment.[47]

The DoD subsequently stood up Joint Task Force Red Hill to execute the safe and expeditious

defueling of the Red Hill Bulk Fuel Storage Facility. The mission statement for JTF Red Hill includes a sentence pledging “to rebuild trust with the State of Hawaii and the local community of Oahu.”[48]

Rebuilding trust does not apparently extend to holding decision makers accountable. The Navy official who made the false and misleading statement to local residents was awarded a Legion of Merit for “his response to the Red Hill water contamination incident,” which “resulted in the expeditious restoration of clean water throughout the community” upon his retirement several months later.[49]

It would appear that institutional loyalty is valued much more than constitutional loyalty. Institutional loyalty seems to be even more important to many DoD decision-makers than defending the environment or defending basic human rights.

Trust and the deepening recruiting crisis

The U.S. military was once revered as the most trusted institution in America. That has changed according to Gallup polls measuring the percentage of Americans who have a “great deal or “quite a lot” of confidence in American institutions.

A 2019 poll indicated that 73% of Americans had confidence in the U.S. military.[50] A downward trend began in 2020 and continues to the present day with confidence scores reported as low as 60%.[51] This lack of trust is a significant factor in the deepening recruiting crisis but is not just an external problem.

The Military Family Support Programming Survey, taken by active-duty, retirees, dependents, and veterans showed that in 2019 a total of 75% of those surveyed would recommend military life to someone considering joining. By 2021, that number had fallen to 63%.[52]

In 2023, the services missed their recruiting goals by a total of 41,000 recruits. The number should be larger except, the 41,000 is the adjusted ‘miss number’ after the services lowered recruiting goals in consideration of the challenging recruiting environment.[54]

As the Acting Undersecretary for Personnel and Readiness testified to Congress, “that number understates the challenge before us as the services lowered [their] end-strength goals in recent years, in part because of the difficult recruiting environment.”[55]

Recruiting is now one of the challenges the Joint Force must consider when it comes to prioritizing manpower capacities across combatant commands while executing global national defense requirements.

We are not asserting that all of the current recruiting challenges can be placed squarely at the feet of the COVID-19 shot mandate, but the unlawful implementation of it certainly contributed.

This is a complex problem and will require a complex, systematic approach to solve it. Tens of thousands of service members stood up for their rights in the face of severe administrative actions and threats of legal recourse.

Over 40 lawsuits involving thousands of these service members as plaintiffs were filed against the DoD as a result of certain policy decisions.[56] This is not the sign of a trusting force; a force that knows its leaders will defend them, their families, and their unalienable rights.

The DoD has little control over some of the competing recruiting challenges such as the job market, generation-z changes, and global economic trends. However, the loss of trust stemming from COVID-19 mandate-related violations is a known factor, and one that is almost completely in the hands of DoD decision makers to correct.

The Constitution is the key

There is no more important value to building an effective fighting force than trust. In a publication to the Joint Force while serving as Chairman of the Joint Chiefs, General Martin Dempsey reflected on the sacrifices made by American service members during more than a decade of war in Afghanistan and Iraq.

He unequivocally stated that the “sacred element of trust enabled [service members] to persevere.”[57] This sacred element must be recaptured and reprioritized by America’s leaders so that the healing and rebuilding process within the U.S. military can begin.

The Constitution serves as the bedrock of the United States and must again take priority above institutional loyalties. Despite the popular rhetoric, America is not a democracy.

In a pure democracy 51% of the people can lawfully tyrannize the remaining 49%. We are, as designed by our founders, a constitutional republic in which our Constitution places individual rights in a place of primacy.

In a constitutional republic even 99% of the people have no lawful power to dominate, tyrannize, or strip the rights from the remaining 1%. The Constitution was not written to restrict the individual, but to restrict the government from unnecessary infringement on the rights of American citizens.

Officers and enlisted members of the U.S. military take an oath, not to an institution, but to the Constitution. To support and defend the Constitution is a complex, challenging, and rewarding task, but it takes moral courage to do so.

Opposing misplaced institutional loyalty often requires the courage to swim upstream against the tide of public opinion, and in this case, against the policies written by some well-intended-but-misguided senior leaders.

This constitutional defense is the highest civic calling of any American service member. When the institution errs on the side of power, control, and infringement, American service members must be willing to step up to protect individual constitutional rights as required by their oaths to the Constitution.[58]

Recommendations

First, service members must get back to their constitutional roots through proper education. Service members are required to train on a host of annual topics including cyber awareness, sexual assault

prevention and response, suicide prevention, and counterintelligence.

Service members take an oath to the Constitution, yet there is no required annual training on this critical founding document of the United States.

Annual training must begin immediately on the Constitution, what the Constitution does for American citizens (including service members), and how service members are to defend the Constitution, including standing up for individual rights.

Second, a full and comprehensive study of the COVID-19 mandates in the military must be initiated. This study must be outsourced to an independent and non-partisan body that is not part of either the Executive or Legislative branches of government.

This independent body must be given full access to all materials, records, communications, and analysis conducted by the DoD, corporations, interagency partners, individuals, and international organizations who contributed in any way to developing, producing, recommending, enforcing, or profiting off any policy, mitigation measure, or product that was in any way involved with COVID-19.

Finally, all subsequent leadership actions, particularly from the 3- and 4-star policy levels, must prioritize the rebuilding of trust with service members and the American people.

All avenues for rebuilding this trust must be openly explored including reinstating service members who were discharged over COVID-19 mandates, offering backpay to service members who were discharged, exploring preventative medicine protocols that are tailored to individual health risks rather than to one-size-fits-all institutional efforts, outsourcing all whistleblower report investigations, removing legal and constitutional analysis to outside the military chain of command, and removing the Inspector General apparatus to outside the military chain of command.

Some of these options may yield significant returns and some may need to be dismissed as possibilities. What cannot be dismissed is the need for deep and critical introspection.

Conclusion

The U.S. military has a moral duty to hotwash (i.e., after-action review) every aspect of this complicated event, to include reviewing every process, every order, and every decision.

Leaders should want to know what was done right, what was done wrong, and what the associated cost were for any errors. They should seek a final and unequivocable review of the legality of the military order itself, because its lawfulness remains ambiguous in the minds of many despite several judicial rulings.

Finally, once all has been analyzed, the institution – if it hopes to retain any credibility at all – should acknowledge the lessons learned, own up to them, and endeavor to never repeat the same mistakes again.

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