

GOP DENOUNCES BARRY GOLDWATER, JOHN TOWER, AND RICHARD NIXON?



John Tower and Barry Goldwater, ca. 1963.

The Republican governors are all clutching their pearls over Biden's announcement to use the power of the federal government to require many businesses across the country to ensure their employees are either vaccinated against COVID-19 or are regularly tested. The New York Times did a round-up of some their comments, many taken from either Twitter or Sunday morning talk shows. Here's a taste . . .

Now, they [various GOP governors] are arguing that Mr. Biden's plan is a big-government attack on states' rights, private business and personal choice, and promise swift legal action to challenge it, setting up a high-stakes constitutional showdown over the president's powers to curb the pandemic.

"@JoeBiden see you in court," Gov. Kristi Noem of South Dakota wrote on

Twitter. Gov. Mark Gordon of Wyoming said the new rule “has no place in America,” and said he had asked the state’s attorney general to be ready to take legal action.

In Texas, Attorney General Ken Paxton questioned President Biden’s authority to require vaccinations or weekly testing at private businesses with more than 100 workers.

“I don’t believe he has the authority to just dictate again from the presidency that every worker in America that works for a large company or a small company has to get a vaccine,” Mr. Paxton said, speaking on a radio show hosted by Steve Bannon, who served as a strategist for Donald J. Trump during part of his presidency. “That is outside the role of the president to dictate.”

[snip]

Gov. Greg Abbott of Texas called the actions an “assault on private businesses” in a statement on Twitter. He said he issued an executive order protecting Texans’ right to choose whether or not they would be vaccinated. “Texas is already working to halt this power grab,” he wrote.

Gov. Doug Ducey of Arizona wrote on Twitter: “The Biden-Harris administration is hammering down on private businesses and individual freedoms in an unprecedented and dangerous way.” He questioned how many workers would be displaced, businesses fined, and children kept out of the classroom because of the mandates, and he vowed to push back.

sigh

Friends, let me introduce you to Public Law

91-596, initially signed into law on December 29, 1970 by Richard Nixon, and amended variously since then. Below are the first two sections of the law. Notice, please, the language I've highlighted with underlining (bold is from the original text):

An Act

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **That this Act may be cited as the "Occupational Safety and Health Act of 1970."***

Footnote (1) See Historical notes at the end of this document for changes and amendments affecting the OSH Act since its passage in 1970 through January 1, 2004.

SEC. 2. Congressional Findings and Purpose

(a) The Congress finds that personal injuries and illnesses arising out of work

situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources –

My, but the language of paragraph (a) sounds like Congress intended the US Department of Labor to regulate conditions that create or spread illnesses in the workplace, and paragraph (b) states pretty clearly where Congress claimed the authority for doing so is grounded in the Commerce Clause of the US Constitution.

Continuing on, the act spelled out some of the details of that “purpose and policy” with the following 13 sub-paragraphs (again, underlining is mine):

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect

to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health; affecting the OSH Act since its passage in 1970 through January 1, 2004.

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

And what kind of liberal cabal forced this clearly authoritarian legislation through Congress? I'm glad you asked.

The Senate vote was 83-3, with 14 not voting. Among the 83 were Barry Goldwater and John Tower – not exactly a liberal pair of folks. The only three senators to vote against this were James Eastland, Sam Ervin, and Strom Thurmond. Over in

the House, the final vote was 310-58, with 65 not voting. Looking at the voting patterns of some of the state delegations, it's plain to see that this was both bipartisan and widely accepted on their side of the building, too.

- Kentucky (4D/3R) voted 7-0-0;
- Wisconsin (5D/5R) voted 9-0-1;
- Oklahoma (4D/2R) voted 5-0-1;
- Florida (9D/3R) voted 6-4-2, with the 4 nays all Democrats and 2 who abstained both GOP;
- Tennessee (5D/4R) voted 5-1-3 (the 3 included 2 Dems and 1 Republican);
- Arkansas (4D/1R) voted 4-0-1 (the 1 was a D);
- South Dakota's (2R) voted 1-0-1;
- Montana (2D) voted 2-0-0;
- Wyoming's sole GOP representative voted aye.

In other words, there were staunch conservatives who voted for this, along with plenty of non-conservatives. The bill that became Public Law 91-596 was seen by a wide majority of both the members of the House and Senate to be a good thing, and well within the powers of the Federal Government to undertake.

Go back to the text of the law above, and look at items 6 and 7. These both make clear that OSHA's mission includes dealing with disease transmission in the workplace. Then skip down to 11, which says the Federal government should work with states, including providing grants for this work. You know, like providing a free

vaccine to deal with disease transmission in the workplace.

OSHA has been around for more than 50 years, and no one has succeeded in challenging their the authority to regulate health conditions in the workplace under this act. There have been successful arguments overturning specific regulations, but the authority to regulate has not been overturned.

I'm not a governor or an attorney general, but I can read the plain text of the law. I can see the wide political range of legislators who voted to create OSHA, and given that OSHA is still here and going strong after 50 years, it's clear that the ability of the federal government to regulate the workplace for safety and health has not been overturned or declared unconstitutional.

So if anyone reading happens to be in conversation with one of these pearl-clutching Republican leaders when they start in on their "This is unprecedented and un-American!" nonsense, ask them for a link.

Better yet, ask Governor Ducey why Goldwater voted for OSHA. Ask Governor Abbott and AG Paxton why John Tower voted for OSHA. Ask any of today's so-called conservatives why a bunch of other conservatives voted with Goldwater and Tower to approve OSHA, and why a conservative like Richard Nixon signed it.