



May 20, 2022

The Hon. Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

The Hon. Anthony Blinken
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Hon. Xavier Becerra
Secretary of Health and Human Services
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Potential Litigation Regarding the Biden Administration's Actions Related to the World Health Organization

Dear President Biden, Secretary Blinken, and Secretary Becerra:

America First Legal Foundation (AFL) is a national, nonprofit organization working to promote the rule of law, prevent executive branch overreach, and protect the Constitution and sovereignty of the United States.

The Executive Branch's authority to make international agreements that affect the domestic rights or privileges of American States and citizens, whether in the form of a "treaty" or otherwise, is narrowly cabined. We have recently become aware of efforts by your Administration to potentially skirt legal requirements that cabin such authority—like the advice and consent clause of the Constitution, or specific implementing legislation—as it pertains to the powers of the World Health Organization (WHO) and the implications for our domestic laws.

This letter puts you on notice that AFL will pursue any and all available legal actions against the Biden Administration on behalf of American citizens, members of Congress, and any of the fifty States to stop any and all unlawful attempts to cede our

sovereignty to the WHO, or to impose any restrictions on the liberties of American citizens that flow from the WHO’s decisions.

Background Regarding Recent WHO Activities.

The World Health Organization is a corrupt and inept international institution that does not advance our national interests. As recently as April 14, 2020, the United States suspended its contributions to the WHO. And on July 6, 2020, the United States notified the United Nations Secretary General that our nation would withdraw from the WHO on July 6, 2021.

The United States took these steps due to substantial evidence of the WHO’s misfeasance and mismanagement related to the COVID-19 pandemic. Among other things, the WHO was complicit “in the spread and normalization” of propaganda by the Chinese Communist Party (CCP) regarding the pandemic.¹ The WHO also suppressed information about the pandemic supplied by the Republic of China (Taiwan)—not because of problems with the data or information, but out of deference to the CCP’s hostility to Taiwan. The WHO’s actions materially hampered the international response to the COVID-19 pandemic, costing countless lives.²

American citizens suffered because of the WHO’s malfeasance and ineptitude. Coupled with the CCP’s misconduct and the widespread transmission of COVID-19, the WHO has contributed to two years of lockdowns, economic setbacks, and serious infringements on liberty that Americans have been subjected to by those with radical agendas. Many Americans lost their lives, others lost their jobs, and all lost their freedoms.

Despite the WHO’s Troubling Record, the Biden Administration Seeks to Commit the United States to Unprecedented and Broader WHO Authority and Responsibility.

Despite the WHO’s troubling record, on January 20, 2021, the Biden Administration rejoined it.³ But the Biden Administration did not just *rejoin* the WHO; it has taken affirmative steps towards enhancing the WHO’s power globally. Indeed, on the same day the United States rejoined the WHO—the same day President Biden launched his “100 Days Masking Challenge” that “ask[ed] the America people to do their part

¹ See U.S. House of Rep. Foreign Affairs Comm., *Minority Staff Report: The Origins of the COVID-19 Global Pandemic, Including the Roles of the Chinese Communist Party and the World Health Organization* at 42-43, 50-51, 53, 55, 58 (Sept. 21, 2020), <https://bit.ly/3G0wXGe>.

² See *id.*; see also Javier Hernandez, *The U.S. is Concerned About China’s Influence Over a Report on the Pandemics Origins*, N.Y. TIMES (Mar. 29, 2021), <https://nyti.ms/3yGkHZT>.

³ Letter from Joseph R. Biden, Jr., President of the United States, to His Excellency António Guterres, Secretary-General of the United Nations (Jan. 20, 2021), available at <https://bit.ly/3MMNnEV>.

... their patriotic duty . . . and mask up for 100 days”⁴—President Biden issued an Executive Order directing the Assistant to the President for National Security Affairs to lead the Administration’s efforts on “engaging with and *strengthening*” the WHO.⁵ And the Biden Administration appointed Dr. Anthony Fauci as Head of Delegation.⁶

Recently, and apparently in furtherance of its desire to “strengthen” the WHO, the Biden Administration proposed amendments to the International Health Regulations (IHR) of 2005 for consideration at this year’s World Health Assembly.⁷ Notably, the proposed amendments from the Biden Administration to the 2005 IHR do nothing to cure—or going forward, prevent—the organizational misfeasance and mismanagement displayed by the WHO during the COVID-19 pandemic. Nor do they seek to address or reverse the CCP’s capture of the WHO and its officials.⁸

Instead, the proposed amendments would, among other things, delegate broad new powers to the WHO’s Director-General, such as facilitating his ability to make determinations about the existence of “public health emergencies” and make “recommendations” about things a state party should do, even absent the agreement of that state party.⁹ And they would establish a “Compliance Committee” empowered, *inter alia*, to work with “experts and advisors, including representatives of [non-governmental organizations] or members of the public” on matters “relating to compliance with obligations.”¹⁰ But the proposed amendments to the IHR paint only part of the picture.

On December 1, 2021, the World Health Organization announced that the World Health Assembly had agreed to “kickstart a global process to draft and negotiate a convention, agreement, or other international instrument under the Constitution of the World Health Organization to strengthen pandemic prevention, preparedness[,] and response.”¹¹

On January 26, 2022, a representative of the Biden Administration, Loyce Pace, Assistant Secretary for Global Affairs at the Department of Health and Human Services, stated that the United States “strongly supports the ongoing efforts to

⁴ Press Release, The White House, Fact Sheet: President-elect Biden’s Day One Executive Actions Deliver Relief for Families Across America Amid Converging Crises (Jan. 20, 2021), available at <https://bit.ly/3a19Y1K>.

⁵ Exec. Order No. 13,987, 86 Fed. Reg. 7019, 7020 (2021) (emphasis added).

⁶ Press Release, *supra* note 4.

⁷ World Health Organization, <https://bit.ly/380MLw2> (last visited May 20, 2022).

⁸ See, e.g., World Health Organization, *WHO Goodwill Ambassadors*, profile of Peng Liyuan, <https://bit.ly/3NnMVwy> (Peng Liyuan is the wife of Chinese President Xi Jinping).

⁹ World Health Org. [WHO], *Strengthening WHO Preparedness for and Response to Health Emergencies*, at 6-8, 11, WHO Doc. A75/18 (Apr. 28, 2022), <https://bit.ly/3yEker7>.

¹⁰ *Id.*

¹¹ World Health Org. [WHO] News Release, *World Health Assembly Agrees to Launch Process to Develop Historic Global Accord on Pandemic Prevention, Preparedness and Response* (Dec. 1, 2021), <https://bit.ly/3wCEpmq>.

strengthen [the] WHO[.]”¹² She then affirmed “the importance of *equity* and equitable access to medical countermeasures and the negative impacts of *misinformation and disinformation* related to the pandemic. *We agree that we must all do better.*”¹³

As Assistant Secretary Pace explained, the IHR are just one component of a broader project to strengthen the WHO (consisting, as she put it, of “various complementary WHO strengthening work streams”).¹⁴ Those include:

- (1) targeted amendments to the International Health Regulations (IHR) (2005),
- (2) a full review of by [sic] the WGPR [Working Group on Preparedness & Response],
- (3) an intergovernmental negotiating body (INB) to develop a *new international instrument on pandemic preparedness and response*, and
- (4) governance improvements at WHO, starting with an informal group and then establishing a Task Team of Member States to work with the Secretariat.¹⁵

Accordingly, the IHR are just one component of a multi-step process that will lead to a new agreement on matters related to pandemics. And while it can be important for countries to share information during pandemics, the American people have every reason to believe that this process will lead to attempts to strip the United States of its national sovereign voice and decision-making abilities regarding potential life and death decisions for American citizens in the event of a merely declared pandemic, or even worse, during an actual future epidemic or pandemic.

Indeed, among the topics being covered at this year’s World Health Assembly are the “WHO’s five priorities going forward, expanding from [Director-General Dr. Tedros Adhanom Ghebreyesus’s] vision delivered at the Executive Board meeting held in January 2022.”¹⁶ At that meeting in January 2022, Dr. Tedros stated that it is a “priority . . . to urgently strengthen the systems and tools for epidemic and pandemic preparedness and response at all levels, underpinned by strong governance and financing to ignite and sustain those efforts, *connected and coordinated globally* by WHO.”¹⁷ He further stated “[t]he decision by Member States at the recent Special Session of the World Health Assembly to negotiate a convention, agreement or other

¹² U.S. Dep’t of State, U.S. Mission to Int’l Orgs. in Geneva, *Strengthening WHO Preparedness for and Response to Health Emergencies*, Statement Delivered by Loyce Pace, Assistant Sec’y for Glob. Affs., U.S. Dep’t of Health and Hum. Servs. (Jan. 26, 2022), <https://bit.ly/3PEQYGX>.

¹³ *Id.* (emphasis added). Notably, the terms “misinformation” and “disinformation” are not defined and lack fixed legal meaning.

¹⁴ *Id.*

¹⁵ *Id.* (emphasis added).

¹⁶ Tedros Adhanom Ghebreyesus, WHO Director-General’s opening remarks at the 150th session of the Executive Board, World Health Organization (Jan. 24, 2022), <https://bit.ly/3LJS9lf>.

¹⁷ *Id.* (emphasis added).

international instrument on pandemic preparedness and response is a great stride forward.”¹⁸ He asserted that “[s]uch an instrument will be a vital tool, but it will not solve every problem. . . . But this agreement, I hope, *will be a generational agreement. That will be a gamechanger.*”¹⁹

The American people do not trust the WHO or the Biden Administration to negotiate a “convention, agreement, or other international instrument on pandemic preparedness and response.” And for good reason: the Biden Administration has repeatedly demonstrated willful disregard for the Constitution, laws, and sovereignty of the United States. For example, just as the WHO suppressed information to conceal CCP complicity for the COVID-19 pandemic, the Biden Administration colluded with technology companies to suppress accurate information about the virus’s source, progression, and impact.²⁰ According to one study, an analysis of the banned content suggests that “the moderation is often politically biased.”²¹ Claims made by the WHO—a demonstrably compromised source of information—have been used to censor American citizens.²²

The American people are also right to be wary of attempts to strengthen the WHO, considering regulatory modifications made by the Obama Administration on January 19, 2017, the day before President Donald J. Trump took office.²³ Those regulations modified the definition of a “public health emergency” as it pertains to Section 361 of the Public Health Service Act, 42 U.S.C. § 264, to specifically include instances in which the World Health Organization had declared a “Public Health Emergency of International Concern.”²⁴ In response to a comment raising concern about the incorporation of the WHO’s determinations into domestic law, the Obama Administration “disagree[d] that referencing the WHO determination of a PHEIC results in any relinquishment of U.S. sovereignty,” because “HHS/CDC will continue to make its own independent decisions regarding when a quarantinable communicable disease may be likely to cause a public health emergency if transmitted to other individuals.”²⁵

At the time of the rulemaking, the Obama Administration acknowledged that amending the definition was important, because “section 361(d) is unique and differs from how the term public health emergency is used in other statutes or provisions of the

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Joe Concha, *Hypocritical Psaki leads chilling effort to flag ‘misinformation’*, POLITICO (July 18, 2021), <https://bit.ly/3G3167D>; see also U.S. House of Rep. Foreign Affairs Comm., Minority Staff Report: The Origins of COVID-19, An Investigation of the Wuhan Institute of Virology at 3, 6-7, 19, 23, 31-35, 44-48, 52-57 (Aug. 2021), <https://bit.ly/38w7XdP>.

²¹ Emilia Niemiec, *COVID-19 and misinformation*, EMBO REPORTS (2020) 21:e51420 (Oct. 26, 2020), <https://bit.ly/3yNjrEu>.

²² *Id.*

²³ See Control of Communicable Diseases, 82 Fed. Reg. 6890 (Jan. 19, 2017).

²⁴ *Id.* at 6970 (codified at 42 C.F.R. § 70.1).

²⁵ *Id.* at 6905-06.

Public Health Service Act because it authorizes application of specific public health measures (apprehension and examination) to specific individuals[.]”²⁶ And therefore, they “consider[ed] it essential to define public health emergency because the existence of such an emergency is a necessary prerequisite to the apprehension and examination of individuals in the precommunicable stage of a quarantinable communicable disease.”²⁷ While the Obama Administration clarified that “[o]nly those communicable diseases listed by Executive Order of the President may qualify as quarantinable communicable diseases,”²⁸ American citizens are rightfully concerned given developments over recent years that these regulations and the Biden Administration’s current efforts to “strengthen” the WHO set us on a slippery slope that will erode our national sovereignty and the rights of individual American citizens.

Again, American citizens are rightfully concerned that the Biden Administration will facilitate an agreement that further erodes the Constitution, laws, and sovereignty of the United States. Rejoining and “strengthening” the WHO does not serve our national interest. It does precisely the opposite. Yet the Biden Administration appears intent on doing so, even potentially at the expense of the Constitution.

Absent Proper Ratification of Any Agreement or Any Specific Implementing Legislation, the Biden Administration Lacks the Authority to Use the WHO to Affect the Domestic Rights or Privileges of American Citizens or States.

As you know, Executive Branch authority to make international agreements that affect the domestic rights or privileges of American States and citizens, whether in the form of a “treaty” or otherwise,²⁹ is narrowly cabined. And while the precise contours of future agreements related to the WHO—outside of the proposed IHR—remain to be seen, we remind you that any such future agreements remain subject to that narrowly cabined authority.

Under the Constitution, the default for international agreements is that they should be created in the form of treaties: “[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.”³⁰ Even in the form of a full treaty, though, such a treaty will not have domestic effect without specific and otherwise lawful implementing legislation.³¹ And while in some circumstances the executive has been recognized as having

²⁶ *Id.* at 6905.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See U.S. Dep’t of State, *Exercise of the International Agreement Power*, 11 FAM 723 et seq. (last reviewed May 19, 2022), <https://bit.ly/3PvscsB> (distinguishing treaties from other forms of international agreements). It is not clear, however, whether the Constitution itself recognizes or allows the distinctions drawn in contemporary practice between treaties and other international agreements. See generally *Bond v. United States*, 572 U.S. 844 (2014); *Medellin v. Texas*, 552 U.S. 491 (2008).

³⁰ U.S. CONST. art. II, § 2.

³¹ See *Bond v. United States*, 572 U.S. 844, 875-76, 878, 882-886 (2014).

authority to enter into international agreements short of treaties on solely executive authority,³² a fortiori, these agreements will likewise lack domestic effect without implementing legislation.

We expect that the Biden Administration will avoid the full formalities (and procedural safeguards) of enacting future agreements related to the WHO as a formal treaty. But even if it does, it manifestly lacks the authority to give such agreements with the WHO any domestic effect without specific and otherwise lawful implementing legislation, and an executive agreement can never take precedence over the Constitution.³³ In fact, when Congress adopted a joint resolution authorizing then-President Truman to accept membership for the United States in the WHO, it did so “with the understanding that nothing in the Constitution of the [WHO] in any manner commits the United States to enact any specific legislative program regarding any matters referred to in said Constitution.”³⁴ That remains true absent congressional action or a constitutional amendment to the contrary.

The Biden Administration may not use the WHO to undermine the rights of U.S. citizens or the laws of the several States. However, its course of conduct provides more than ample evidence and reason to believe it intends to do so. And we note with particular concern the effort at the World Health Assembly to draft a more comprehensive and more invasive WHO constitution, which would seek to impose its dictates as binding and enforceable rules on its members, including the United States.³⁵

While the initial response to the arrival of COVID-19 in the United States began as “two weeks to stop the spread,” slowly and steadily power-hungry politicians and un-elected bureaucrats used it as justification to violate the rights of American citizens across this country at a previously unimaginable level. In the same way, these measures pertaining to the WHO will surely be used as justification for future restrictions on our liberties and the erosion of our national sovereignty. And they will do nothing to address the CCP’s future misconduct and interference in the WHO’s affairs.

³² See *United States v. Belmont*, 301 U.S. 324, 330 (1937).

³³ See *Reid v. Covert*, 354 U.S. 1, 16–19 (1957).

³⁴ Act of June 14, 1948, Pub. L. No. 80-643, 62 Stat. 441 (providing for membership and participation by the United States in the World Health Organization and authorizing an appropriation therefor), available at <https://bit.ly/3LuC42o>. See also Sen. Ted Cruz, *Limits on the Treaty Power*, 127 HARV. L. REV. FORUM 93, 106-108 (2014).

³⁵ See U.S. Dep’t of State, U.S. Mission to Int’l Orgs. in Geneva, *Strengthening WHO Preparedness for and Response to Health Emergencies*, Statement Delivered by Loyce Pace, Assistant Sec’y for Glob. Affs., U.S. Dep’t of Health and Hum. Servs. (Jan. 26, 2022), <https://bit.ly/3PEQYGX>; World Health Org. [WHO] News Release, *World Health Assembly Agrees to Launch Process to Develop Historic Global Accord on Pandemic Prevention, Preparedness and Response* (Dec. 1, 2021), <https://bit.ly/3wCEpmq>.

You are now on notice. We will partner with courageous Attorneys General, members of Congress, and American citizens to stop any unlawful actions you take. We will not cede our sovereignty to an international body of unelected, corrupt, and unaccountable bureaucrats.

Sincerely,

/s Gene P. Hamilton
GENE P. HAMILTON
Vice-President and General Counsel
America First Legal Foundation