



Written by [Bob Adelman](#) on November 17, 2021

Conservative Appeals Court to Hear Vax Mandate Lawsuits

Thirty-four lawsuits were brought in all 11 courts of appeal as well as the D.C. court opposing the Biden vaccine mandate for businesses with more than 100 employees. Under law they had to be consolidated into one court, and the court that “won the lottery” yesterday [was the Sixth Circuit Court of Appeals](#).

This bodes well for the Fifth Circuit Court of Appeals, which placed a temporary “stop” order on the Biden mandate. If the Sixth Court considers all that the Fifth Circuit uncovered, the three judges looking at all 34 lawsuits should have an easy time of it in making that temporary order permanent.



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Of course, the Biden administration will demand that the full Sixth Circuit court hear the case if the three-judge panel rules against it. And if the full court affirms the ruling by the three judges, then the Biden attorneys will likely appeal to the Supreme Court. In short, this is the just the beginning of the battle over what the Constitution says, and what the Biden administration thinks and wishes that it says.

Of the 27 judges sitting on the Sixth Circuit (which oversees district courts in Kentucky, Michigan, Ohio, and Tennessee), 20 of them were nominated by Republican presidents: six by Trump, eight by Bush II, three by the elder Bush, and three by Reagan. The others were nominated either by Clinton or Obama.

The Fifth Circuit made clear the perfidy the Biden administration engaged in to justify its unconstitutional mandate. Judge Engelhardt wrote:

After the President voiced his displeasure with the country’s vaccination rate in September, the Administration pored over the U.S. Code in search of authority, or a “work-around,” for imposing a national vaccine mandate.

The vehicle it landed on was an OSHA ETS [emergency temporary standard].

The judge footnoted the source backing up his claim:

On September 9, 2021, White House Chief of Staff Ron Klain retweeted MSNBC anchor Stephanie Ruhle’s tweet that stated, “OSHA doing this vaxx mandate as an emergency workplace safety rule *is the ultimate work-around for the Federal govt to require vaccinations.*”

That should suffice for the Sixth Circuit three-judge panel to bring closure to the matter and affirm the Fifth Circuit’s decision. But Judge Englehardt also questioned the timing, and the hypocrisy. First of all,



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he wrote, OSHA had initially declined to use its ETS powers back in June 2020, declaring that it was “not necessary” to “protect working people from occupational exposure to infectious disease.” But once the Biden attorneys decided to use the agency’s ETS power to inflict its mandate on the people, it changed course.

And what hypocrisy. Wrote the judge:

The Mandate’s stated impetus — a purported “emergency” that the entire globe has now endured for nearly two years, and which OSHA itself spent nearly two months responding to — is unavailing as well.

“Unavailing” is a nice way the judge had of saying “empty,” “trivial,” and “worthless,” as well as completely unpersuasive.

Judge Engelhardt said that OSHA should have used its ETS power “delicately,” because it is an “extraordinary power” that Congress granted (illegally, but that’s another matter) to the agency back in 1971 under President Nixon.

But, no, wrote the judge:

But the Mandate at issue here is anything but a “delicate exercise” of this “extraordinary power.”

Quite the opposite, rather than a delicately handled scalpel, the Mandate is a one-size-fits-all sledgehammer that makes hardly any attempt to account for differences in workplaces (and workers) that have more than a little bearing on workers’ varying degrees of susceptibility to the supposedly “grave danger” the Mandate purports to address.

Ryan Bangert, senior counsel for Alliance Defending Freedom, one of many public-interest law firms bringing those 34 lawsuits, said, “The Biden administration’s decision to mandate vaccines through an OSHA emergency rule is unlawful and compels employers like our clients to intrude on their employees’ personal health decisions.”

Patrick Hughes, president and co-founder of Liberty Justice Center, which also has clients contesting the mandate, said:

This mandate represents the greatest overreach by the federal government in a generation. It is illegal and unconstitutional, and we are committed to ensuring that it never sees the light of day.

May the Sixth Circuit’s three-judge panel, its full court if necessary, and the Supreme Court upon appeal, all see the Biden vaccine mandate the same way.



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