



Written by [Michael Tennant](#) on January 5, 2022

## Judge Halts Biden's Head Start Vaccine Mandate in 24 States

The Biden administration's vaccine mandates took another hit Saturday as a federal judge issued an injunction against one for Head Start employees.

"The issue in this case is not whether individuals should take the COVID-19 vaccine, but whether federal agencies can mandate individuals to take a vaccine or be fired," [wrote](#) U.S. District Judge Terry Doughty. "In this Court's opinion, the Executive branch has declared it has the authority to make laws through Federal agencies.... If the Executive branch is allowed to usurp the power of the Legislative branch to make laws, then this country is no longer a democracy — it is a monarchy."



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The "Head Start Mandate," as Doughty referred to it, requires all Head Start employees, contractors, and volunteers working with children to be fully vaccinated against COVID-19 by January 31 and all children aged two and older attending Head Start programs to wear masks. It offers very limited exemptions to the vaccine requirement, and those who are exempted must submit to weekly testing.

A coalition of 24 states sued the Department of Health and Human Services (HHS) and some of its subsidiary agencies, arguing that HHS had exceeded its authority in issuing the mandate, that the mandate unconstitutionally overrides state laws, and that the states' "citizens will suffer irreparable injury by having a substantial burden placed on their liberty interests because they will have to choose between losing their jobs or taking the vaccine," according to the ruling.

HHS, meanwhile, claimed that it had authority to issue the mandate under existing law and that the mandate was so urgently needed that the department could not be bothered to give the public time to comment on it before it was finalized.

Doughty was not taken in by these arguments.

"Although this case is about the Head Start Mandate, the real issue is separation of powers," he wrote.

"The powers that Congress afforded the Agency Defendants," he declared, "do not include, or imply, the power to impose vaccine and/or mask mandates," notwithstanding HHS' "claim to possess 'superpowers'" that would essentially allow the HHS secretary to issue any mandates to Head Start agencies that he so desires. "If Congress intended to allow OHS [Office of Head Start] to be able to mandate vaccines for Head Start staff, volunteers, and contractors, Congress certainly hid it well."

As to HHS' claim that it had "good cause" not to publish the mandate for public comment prior to finalizing it, Doughty pointed out that HHS took 82 days from the time President Joe Biden announced



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the mandate to the time HHS published it in the *Federal Register*. “Agency Defendants could have completed notice and comment TWICE during that time,” observed Doughty. “It took Agency Defendants over twice as long to prepare the Head Start Mandate without notice and comment as it would have to have complied with the notice and comment requirement.”

Moreover, Doughty noted, allowing a comment period would have given HHS time to consider such relevant facts as those relayed in a letter from National Head Start Association Executive Director Yasmira Vinci to HHS Secretary Xavier Becerra in which Vinci warned of “the potential devastating effects” the mandate would have on local Head Start programs. Vinci cited a survey of local programs that found a low vaccination rate among many of their staffs and an expectation that they would lose a significant portion of their employees. Half of the programs estimated they would have to close their classrooms, and another third were uncertain of their future.

Instead, despite Vinci’s plea that Becerra allow flexibility for local Head Starts, HHS forged ahead with its one-size-fits-all mandate, endangering one of Democrats’ favorite — and, naturally, unconstitutional — federal programs.

Doughty issued a preliminary injunction against the Head Start Mandate in the 24 states that had brought suit. “The public interest is served by maintaining the constitutional structure and maintaining the liberty of individuals who do not want to take the COVID-19 vaccine,” he averred. “Once the vaccine has been taken, it is too late.”

“This issue will certainly be decided by a higher court than this one,” penned the doughty defender of federalism. “This issue is important. The separation of powers has never been so thin.”





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