



Written by [C. Mitchell Shaw](#) on December 24, 2021

SCOTUS to Hear Arguments on Biden Vaccine Mandates

The Biden administration's attempts to force Americans to be vaccinated against COVID-19 are running into one legal hurdle after another. This week — after a series of lower court decisions against the unconstitutional mandates — the U.S. Supreme Court has announced that it will hear oral arguments in two separate cases challenging the mandates.

The particular challenges address both Biden's vaccine mandate for businesses with over 100 employees and his mandate for healthcare workers at facilities receiving Medicaid and Medicare funding.



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While some have argued that private businesses have the right to require employees to be vaccinated (and the courts have largely agreed), the issue at hand here is whether the federal government has the constitutional authority to force employers to require vaccines. Since the powers clearly enumerated in the Constitution do not mention anything even remotely resembling forcing people to have something injected into their bodies, the answer to that question should be obvious.

As Fox News [reported](#), Gregory Magarian, a constitutional law professor at Washington University in St. Louis, addressed the cases stemming from the federal mandate on employers with more than 100 employees, saying, “The reasoning across the cases is basically the same, which is that these statutes don't give the president or the agency in question the authority to issue the mandates.”

Lower courts have hammered the employer mandate in what Fox News [called](#) a “string of legal losses” for the Biden administration. One such loss was when Louisiana was joined by 13 other states in a lawsuit to kill the mandate. As Fox News reported earlier this month:

U.S. District Court for the Western District of Louisiana Judge Terry Doughty ruled that the Biden administration does not have the constitutional authority to go around Congress by issuing such a mandate.

In his ruling, Doughty wrote, “If the executive branch is allowed to usurp the power of the legislative branch to make laws, two of the three powers conferred by our Constitution would be in the same hands,” adding, “If human nature and history teach anything, it is that civil liberties face grave risks when governments proclaim indefinite states of emergency.”

The second set of cases address the Biden administration's mandate requiring the vaccines for healthcare workers at facilities receiving Medicaid and Medicare funding. That mandate has gone back and forth in the lower courts, being banned by one court and then having that ban lifted by another. But with the Supreme Court preparing to hear arguments, the medical worker mandate appears ready to be ruled out-of-bounds.

The Biden administration has doubled down, claiming that “vaccination requirements work” and vowing



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to “vigorously defend” the mandates in court, with an unnamed White House official saying:

The federal government, the country’s largest employer, has successfully implemented its requirement in a way that has boosted vaccinations and avoids any disruptions to operations.

That same official also said that the Biden administration’s “implementation [of a mandate for federal employees] sends the clear message to businesses, including federal contractors, that similar measures will protect their workforce, protect their customers, and protect our communities.”

But sending a “clear message” does not appear to satisfy the administration. Unless that message is received with joyful obedience as if it were a beneficent command given by one with exalted wisdom, the administration immediately shifts to force. In this instance, the administration likely overstepped its authority by issuing a mandate for federal employees in the first place. And then — when that “clear message” was not received as wisdom from on high and immediately followed — the administration again overstepped its authority with mandates requiring private employers and healthcare workers to accept the vaccine — personal choice and informed consent be damned.

With the current makeup of the Supreme Court, there is at least a fair chance that this could be decided correctly. But that is not even the main point. The point is the continued — but erroneous — idea that the court is the sole arbiter of what is and is not constitutional. Judge Doughty was correct that “the executive branch [should not be] allowed to usurp the power of the legislative branch to make laws” and that attempts by the Biden administration to do so threatens the constitutional principle of separation of powers. But there is more to separation of powers than the clear division between the three branches of the federal government; states also have a role to play. Rather than solely looking to the Supreme Court (which — it should always be remembered — is, after all, a branch of the federal government), constitutionalists should keep in mind that states also have the power (and responsibility) to declare unconstitutional federal laws null and void.

This is why Thomas Jefferson said that where unconstitutional laws are concerned, [“the rightful remedy” is nullification](#). And James Madison — the Father of the Constitution — said states are “duty bound” to interpose “to arrest the progress of the evil.”

Since there is not one clause in the Constitution that can honestly be interpreted to grant to the federal government the power to require vaccines, this is a clear case of federal overreach. Since the mandates are therefore clearly unconstitutional, the states that are fighting them in court should also be prepared to fight them in their own legislatures with a bill to nullify them, regardless of how the Supreme Court decides.



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