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## **Biden Withdraws OSHA Vaccine Mandate After SCOTUS Stays Rule, Refuses to Infer Legal Authority**

**Washington, DC (January 25, 2022)** - The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) announced today that it will [withdraw](#) the mandate requiring employers with 100 or more employees to either implement a COVID-19 vaccination policy or force employees to present a weekly negative COVID-19 test. The withdrawal of the Biden Administration’s Emergency Temporary Standard (ETS) comes after the Supreme Court ruled in a [6-3 decision](#) earlier this month that the ETS was unprecedentedly broad, invasive, and extends beyond OSHA’s legitimate statutory authority. But the Biden Administration is not giving up; instead, it says that it will focus its resources on promulgating a permanent rule rather than the ETS.

NCLA, a nonpartisan, nonprofit civil liberties group, filed [amicus briefs](#) at earlier stages of the OSHA litigation arguing that an executive agency unconstitutionally exercises legislative power when it issues regulations like the ETS to resolve “major questions” of economic and political significance. Congress must act in such cases, and courts must not lightly read such power into general provisions. Even if Congress had sought to specifically delegate such authority to OSHA, which it did not, Congress still may not divest its legislative power to OSHA.

Three Justices—Thomas, Alito and Gorsuch—wrote a concurring opinion to explain that “the major questions doctrine serves a [nondelegation] function by guarding against unintentional, oblique, or otherwise unlikely delegations of the legislative power.” In other words, a broadly worded statute—such as one that purports to grant OSHA powers to issue an ETS it deems “necessary” to mitigate a “grave danger”—does not empower the agency to resolve major policy questions such as instituting a nationwide vaccine mandate.

The breadth and invasiveness of the ETS demarcate it as a regulation of vast economic and political significance. Congress never explicitly and specifically delegated such authority to OSHA—nor could it. The Supreme Court acknowledged that “in its half century of existence, [OSHA] has never before adopted a broad public health regulation of this kind—addressing a threat that is untethered, in any causal sense, from the workplace.” Even federal agencies specifically tasked with combating infectious diseases have never made such an attempt.

NCLA has filed numerous other original lawsuits against government-imposed vaccine mandates as a condition of employment, especially those imposed by executive officials without legislative input—[Vanderstelt v. Biden](#), [Rodden v. Fauci](#), [Norris v. MSU](#), [Zywicki v. GMU](#).

### **NCLA released the following statements:**

“OSHA may be tempted to return to the drawing board and craft a new vaccine mandate, perhaps under its non-emergency powers. That would be a mistake. The Supreme Court made abundantly clear that Congress could not have delegated to OSHA *any* authority to impose sweeping public health measures under the guise of workplace safety. As such, OSHA could not cure the ETS’s defects by exercising its non-emergency powers to regulate workplace hazards.”

— **Sheng Li, Litigation Counsel, NCLA**

“The Government knows that, given the Supreme Court’s stay decision, it has no realistic chance of ultimate success and is effectively abandoning the mandate—at least for now. We expect to see the Government take similar action with respect to the federal contractor vaccine mandate, which is even more constitutionally problematic than OSHA’s vaccine-or-test requirement.”

— **Jenin Younes, Litigation Counsel, NCLA**

“It is immoral and unconscionable for OSHA or anyone else to subject employees to the choice of ‘a jab or a job,’ especially where there is no consideration of natural immunity and where the experimental vaccine in question does not appear to prevent transmission of the virus. Fortunately, the Supreme Court agreed that OSHA lacked statutory authority to issue its ETS vaccine mandate in this case. But the protection of individual rights to informed consent and bodily integrity should rest on firmer stuff than the court-invented ‘major questions’ doctrine.”

— **Mark Chenoweth, Executive Director and General Counsel, NCLA**

## **ABOUT NCLA**

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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