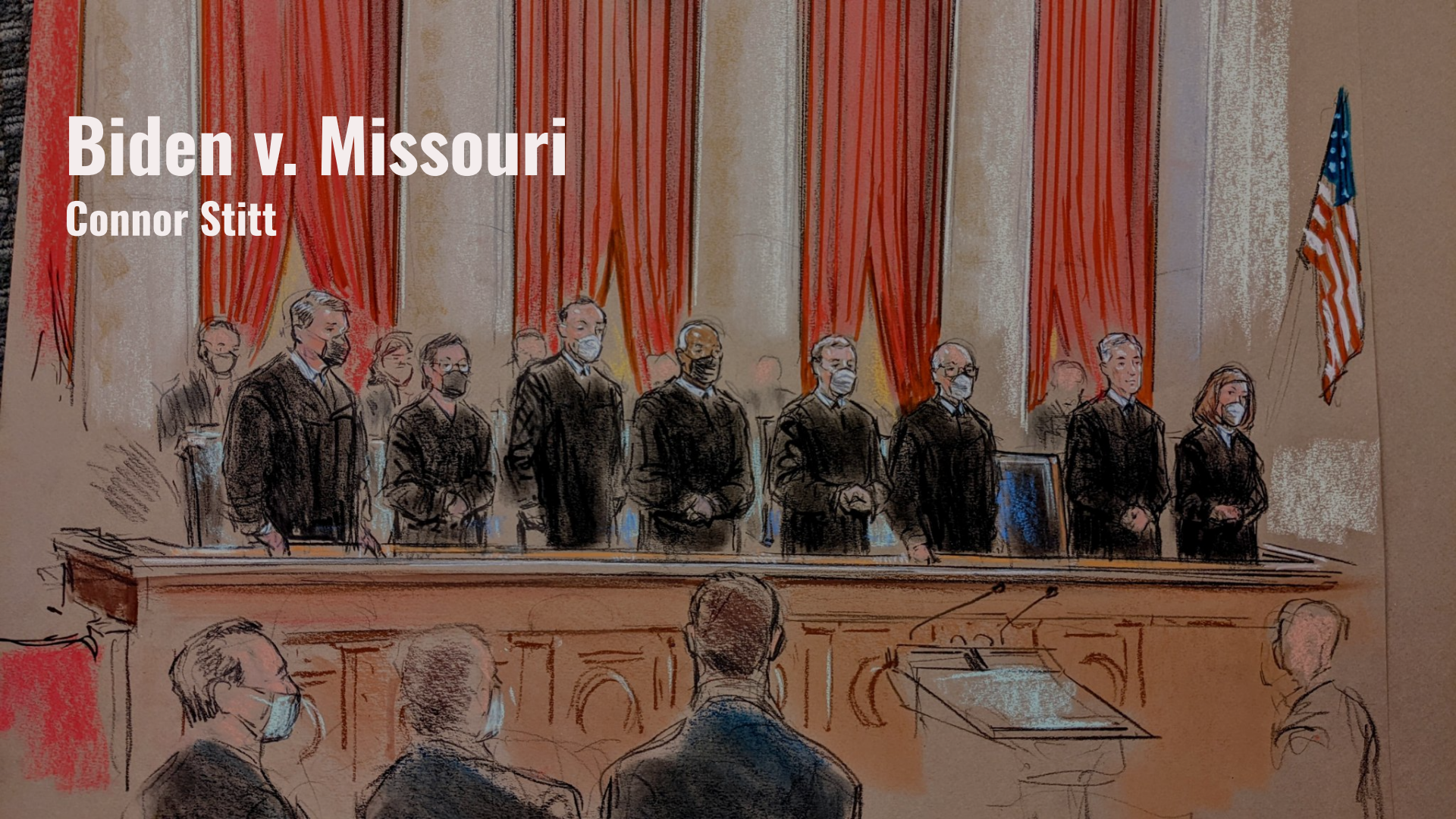


# Biden v. Missouri

Connor Stitt



# **Facts of the Case**

# Plaintiff and Defendant

xx

## Plaintiff/Petitioner

Joseph R. Biden

## Defendant/Respondent

Missouri, et al.



# Facts of the Case



On November 4, 2021, CMS released a rule that required Medicare and Medicaid providers and suppliers to require eligible staff to receive the COVID vaccine by December 6, 2021.

The Missouri Court “concluded that CMS likely exceeded its statutory authority in issuing the [rule] because the applicable provisions do not specifically authorize the agency to mandate vaccination,” and granted an injunction to stay the rule.

So,

Does the Department of Health and Human Services have the authority to enforce a rule requiring health care workers at facilities that participate in the Medicare and Medicaid programs to be fully vaccinated against COVID-19 unless they qualify for a medical or religious exemption?



**Xavier Becerra,**  
secretary of health  
and human services  
(HHS)



CMS lives in HHS



### What is What?

CMS and HHS are often referred to interchangeably. HHS is where the authority is sourced.





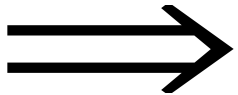
# Facts of the Case



The court begins by establishing the scope of authority entrusted with the Secretary of Health and Human Services:

“[The Secretary] **has general statutory authority** to promulgate regulations “as may be necessary to the efficient administration of the **functions** with which [he] is charged.”

What are those **functions**? The court outlines broadly that they are to “ensure that the healthcare providers who care for Medicare and Medicaid patients **protect their patients’ health and safety.**” Vaccines are necessary for this and therefore:



The Secretary *does have* the proper authority to enforce the vaccination rule.

Further, the court is confident in this ruling, mostly since “healthcare workers and public health organizations overwhelmingly support the Secretary’s rule.”



## Heuristically:

---

*“All the Secretary is doing here is to say to providers, you know what? Basically the one thing you can’t do is to kill your patients. So you have to get vaccinated so that you’re not transmitting the disease that can kill elderly medical—Medicare patients, that can kill sick Medicaid patients. You can’t be the carrier of disease.”*

-Associate Justice Elena Kagan

# Facts of the Case



*“The rule thus fits neatly within the language of the statute”* -majority opinion

The court essentially reasoned that HHS was within its bounds because the rule:

- Is properly limited to healthcare
- Impacts  $\leq 10,000,000$  employees



# The vote



The majority opinion is unsigned. However, while there isn't a specified author to the majority, there are four dissenting justices, with two distinct dissents, authored by Thomas and Alito, with Gorsuch and Barrett joining.

By omission, we know Kavanaugh, Kagan, Sotomayor, Roberts and Breyer could all be authors of the majority.



## Dissenting opinion (Thomas)

---

*“The Government has not made a strong showing that this hodgepodge of provisions authorizes a nationwide vaccine mandate.”*

*“[T]he Court does not explain why the bare existence of these regulations is evidence of what Congress empowered the agency to do. Relying on them appears to put the cart before the horse.”*

-Associate Justice Clarence Thomas



## Dissenting opinion (Alito)

---

*“Before concluding that the Federal Government possesses this authority, we should demand stronger statutory proof than has been mustered to date.”*

-Associate Justice Samuel Alito

Note: Alito was skeptical of emergency claims by HHS

## Confirmation/connection to previous cases



While this case doesn't have any prominent predecessors, there are some cases which bear similar qualities.

One such case is *National Federation of Independent Business (NFIB) v. Department of Labor, Occupational Safety and Health Administration (OSHA)*

### Question

Did the Occupational Safety & Health Administration exceed its authority in promulgating a rule mandating that employers with at least 100 employees require covered workers to receive a COVID-19 vaccine or else wear a mask and be subject to weekly testing?

# NFIB v. OSHA



- Decided Jan 13, 2022
- Related to vaccine mandates, but outcome restricts agency power
  - Decision grants a stay from OSHA's order

# Comparison



## NFIB v. OSHA

OSHA rule requires employees  
vaccinate OR wear masks and get  
tested

Decided Jan 13, 2022

- Court grants an application to stay the OSHA rule  
→ mandate does not take effect
- OSHA doesn't have the authority to make broad public health decisions

## Biden v. Missouri

HSS rule requires vaccination for  
healthcare workers

Decided Jan 13, 2022

- Court grants applications to stay the injunctions against Secretary of Health  
→ mandate can be enforced
- HSS does have the authority to make such public health decisions
  - Also, the scope of this rule is limited compared to OSHA's rule



**Significance**

# Constitutional Issues



At its core, this case explores the expansion of power in executive agencies. We will explore this topic through:

- Commerce clause
- General Welfare

Before we do, see these quotes to see how the dissenters feel about executive authority.

*"Today, however, most federal law is not made by Congress. It comes in the form of rules issued by unelected administrators."*

-Associate Justice Samuel Alito (dissenting)

*"If Congress had wanted to grant CMS authority to impose a nationwide vaccine mandate, and consequently alter the state-federal balance, it would have said so clearly. It did not."*

-Associate Justice Clarence Thomas (dissenting, of course)

# Commerce clause



Article I, Section 8, Clause 3:

*“[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”*

- Is imposing a vaccine justified under the Commerce Clause?
  - Does not necessarily apply, since a vaccine doesn't constitute a regulation of 'commerce,' an 'economic enterprise,' 'economic activity,' or 'some sort of economic endeavor.'
    - Instead, a mandate would regulate “an individual's non-economic inactivity: merely existing as an unvaccinated person.” (Heritage Foundation)
- Applies to both *Biden v. Missouri* and *NFIB v. OSHA*

# General Welfare



Article I, Section 8, Clause 1:

*“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”*

The general welfare, also sometimes referred to as the “public welfare” or the “public good” or the “common good”, is the concern of the government for the health, peace, and safety of its citizens.

- COVID is a safety concern → The Gov’t should be working to ensure the public welfare
  - This is in Article I → grants Congress this power, not explicitly the executive agencies unless otherwise stated
  - We will explore the interplay between Congress and executive agencies with the Major Questions Doctrine

# Later overturned?



No. This case is recent and in effect today.

# Policy/political significance



Noting that this opinion was released quickly as necessitated by COVID, there are a two notable implications.

- Major Questions Doctrine
  - Confirmed relevance in administration cases (APA)
- More broadly, these questions should be left for the states (majority opinion in OSHA)

Also, concerning precedent:

This case is intimately related to legislation on vaccine mandates as a whole—it's essentially a special case for vaccine mandates, which allows for:

- 1.** Introducing pro-mandate precedent (although limited in this case)
- 2.** Giving a platform for dissent (Thomas, Gorsuch, Alito, Barrett)



# Major Questions Doctrine



The Major Questions Doctrine posits that “courts will presume that Congress does not delegate to executive agencies issues of major political or economic significance.”

## **In this case:**

Should this issue be addressed within the agency itself, or does it require Congress to pass legislation instead?

Here, the court ruled that the HHS had significant enough authority to enforce their own solution.

- Established with *West Virginia v. Environmental Protection Agency (EPA)*
  - Does EPA have the authority to regulate carbon emissions in virtually every industry? → No.
  - EPA must ground its support from Congress to enforce such a broad policy. It cannot do so.

# The Administrative Procedure Act (APA)

Goals of the Act:

- (1) to ensure that agencies keep the public informed
- (2) to provide for public participation in the rule-making process
- (3) to prescribe uniform standards
- (4) to restate the law of judicial review

This act was passed in an effort to mitigate issues with separation of powers. A common criticism of agencies is that they possess aspects of judicial, legislative and executive functions.

## Do you agree or disagree with the decision?



### **I agree.**

In a broader sense, I can acknowledge skepticism surrounding vaccine mandates, whether that skepticism be founded in claims of limited constitutional authority or concern over vaccine safety.

However, the main difference here is that this case focuses on federal health employees. These employees are in close-contact with high risk patients, such as the elderly or immunocompromised. Therefore, they must do everything within their power to prevent the spread of COVID. This is the clear and pragmatic choice that was necessary, especially given the timeliness of the issue.



# Sources



<https://www.oyez.org/cases/2021/21A240>

[https://www.supremecourt.gov/opinions/21pdf/21a240\\_d18e.pdf](https://www.supremecourt.gov/opinions/21pdf/21a240_d18e.pdf)

<https://www.youtube.com/watch?v=D3qh8r1nfhM>

<https://time.com/6138247/supreme-court-bidens-vaccination-rules/>

<https://www.cnn.com/politics/live-news/biden-covid-vaccine-mandates-supreme-court-01-07-22/index.html>

<https://crsreports.congress.gov/product/pdf/R/R46745>

<https://www.youtube.com/watch?v=D3qh8r1nfhM>

<https://www.oyez.org/cases/2021/21A244>

[https://www.supremecourt.gov/opinions/21pdf/21a244\\_hgci.pdf](https://www.supremecourt.gov/opinions/21pdf/21a244_hgci.pdf)

[https://en.wikipedia.org/wiki/Major\\_questions\\_doctrine](https://en.wikipedia.org/wiki/Major_questions_doctrine)

[https://www.supremecourt.gov/DocketPDF/21/21A249/207137/20220103075058080\\_21A249%20Heritage%20SCOTUS%20reply.pdf](https://www.supremecourt.gov/DocketPDF/21/21A249/207137/20220103075058080_21A249%20Heritage%20SCOTUS%20reply.pdf)

<https://www.oyez.org/cases/2021/20-1530>