



Written by [Bob Adelman](#) on January 1, 2022

Nearly 200 Members of Congress Join Lawsuit Against Biden's OSHA Virus Mandates, Declaring Them Unconstitutional

More than 180 members of Congress [filed a friendly brief](#) to the Supreme Court on Thursday as the high court prepares to hear arguments against the Biden administration's virus mandates issued by the Occupational Safety and Health Administration (OSHA). What's reassuring is that so many members not only understand that the Constitution is the final bulwark against tyranny, but that they were willing to say so publicly by signing onto that brief.

At issue is one of the primary guards against tyranny: the separation of powers. The founders determined that powers granted to the federal government by the Constitution should not only be limited, but that those limited powers should be separated into three parts: the legislative, the executive, and the judicial. By competing against one another the chances of government overreaching its authority would be greatly reduced.

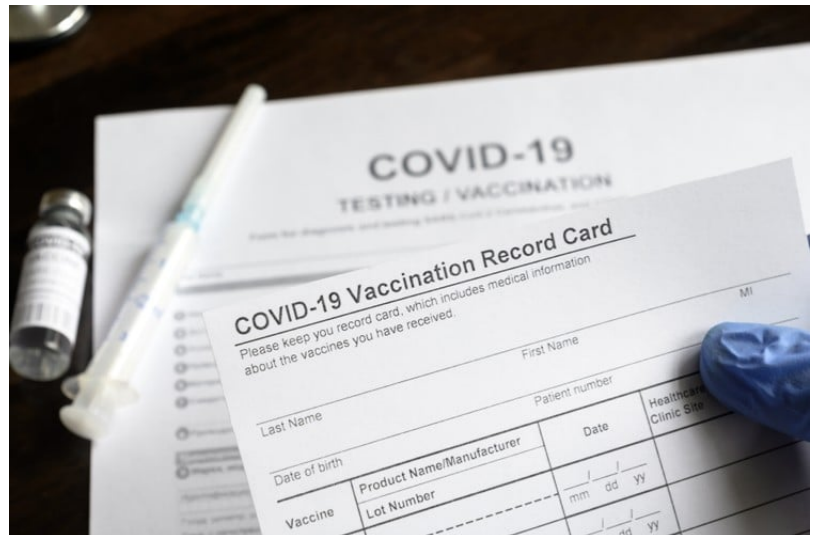
From the brief:

The separation of powers has long been known to be a defense against tyranny.... And so [quoting a previous Supreme Court ruling] it "remains a basic principle of our constitutional scheme that one branch of the Government may not intrude upon the central prerogatives of another."

The brief quoted from another Supreme Court ruling from 1983: "The principle of separation of powers was not simply an abstract generalization in the minds of the Framers: it was woven into the documents that they drafted in Philadelphia in the summer of 1787."

From another high court decision, the brief said: "To the Framers, the separation of powers and checks and balances were more than just theories. They were practical and real protections for individual liberty in the new Constitution."

When Congress passed the legislation creating OSHA, which was signed into law by then-President Richard Nixon in 1970, it violated that doctrine. In 1989 the high court ruled (*Mistretta v. United States*) that Congress could violate the Constitution as long as it placed restrictions and limitations on



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those powers it delegated to federal agencies. Justice Anton Scalia dissented, but he was in the minority.

Back to the brief:

When an executive agency overreaches the boundaries of its authority [granted by Congress] ... it undermines both the vertical [states versus the federal government] and the horizontal [the three branches of the federal government] separation of powers that protect the people.

Forty-seven senators and 136 members of the House signed onto the brief, including many widely known as supporters of their oath of office to protect and defend the Constitution: Marsha Blackburn, Tom Cotton, Ted Cruz, Josh Hawley, John Kennedy, Mike less, Rand Paul, Ben Sasse, Tim Scott, Andy Barr, Andy Biggs, Dan Crenshaw, Matt Gaetz, Marjorie Taylor Greene, Louis Gohmert, Darrell Issa, Jim Jordan, Thomas Massie, Burgess Owens, and Chip Roy.

Others with less stellar voting records added their names to the brief as well, perhaps for political rather than constitutional reasons: John Cornyn, Joni Ernst, Lindsey Graham, Lisa Murkowski, Elise Stefanik, Steve Scalise, Doug Lamborn, and Joe Wilson.

They said they were “concerned with the executive overreach seen in the current administration’s response to the COVID-19 pandemic. [We] have an interest in the powers [we] delegate to agencies not being abused.... In this case, the promulgation by the Occupational Safety and Health Administration of a sweeping, nationwide vaccine mandate on businesses intrudes into an area of legislative concern far beyond the authority [we delegated to] the agency.”

The brief made much of the so-called “workaround” that OSHA officials used in an attempt to avoid drawing attention to its illegal mandate. *The New American* drew attention to that illegal maneuver back in November:

Judge Engelhardt [a Trump appointee to the Fifth Circuit Court of Appeals] also blew the cover on just why OSHA was picked to do the dirty work of the Biden mandate:

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.

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.*”

This is why the Founders labored mightily for months in stifling heat in Philadelphia in the summer of 1787: to keep the powers being granted to the federal government from being abused by power-hungry politicians.

The brief made clear that the threat was real. Unless restrained OSHA would continue go rogue:



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To allow OSHA the authority to control [individuals' own health decisions] would remove any semblance of an intelligible principle in the delegated authority that Congress has given the agency....

The sudden "discovery" of authority under the OSH Act confirms that it was never intended to displace state authority in this area.

It's gratifying that so many members of both houses of Congress are willing to support this brief, in many levels. It might help recalcitrant "conservative" justices on the high court grow a backbone and declare the entire OSHA sham a fraud and a deceit upon the American people. It might help those running nervously to retain their seats come November to show their constituents that they really are conservative constitutionalists after all.

But those signing onto the brief for constitutional reasons — to stuff the OSHA genie back into the bottle — should be congratulated for recognizing that the Constitution of the United States is not dead nor even dying. It remains, as it must, the final bulwark against tyranny.

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