

Emergency Effrontery

November 15, 2021

The ruling was hardly shocking. Most constitutional scholars expected it, I think. That being said, the whole business is . . . shocking.

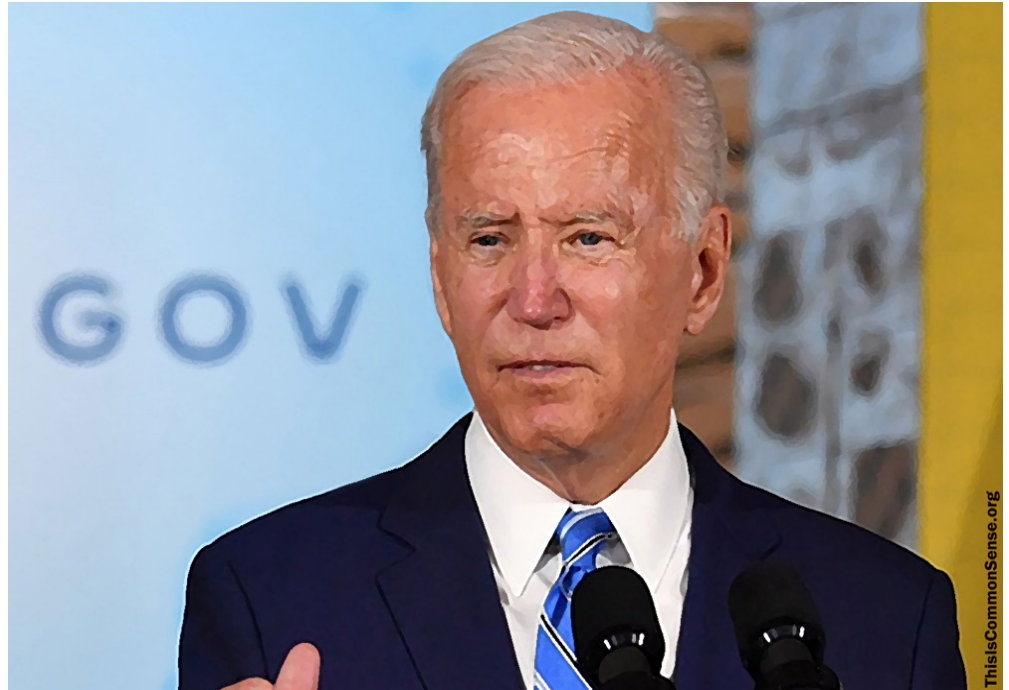
I refer to the 5th Circuit Court of Appeals coming down hard against the Biden Administration's vaccine mandate.

Say those words, "vaccine mandate," reflecting on how it was "enacted" — *not* by act of Congress — and the Occupational Safety and Health Administration's tortured justification for forcing private companies seems doomed.

It is fairly obvious that, as the court put it, Biden's decree "grossly exceeds OSHA's statutory authority."

At least if the Constitution retains any of its meaning.

"The stay," explains *Reason* editor Jacob Sullum, "which the court issued on Friday evening, says OSHA shall 'take no steps to implement or enforce the Mandate until further court order.' It is officially a preliminary pause 'pending adequate judicial review of the petitioners' underlying motions for a permanent injunction.' But the court



left little doubt that it would grant those motions, saying 'petitioners' challenges to the Mandate show a great likelihood of success on the merits.'"

The administration's desperate shoehorning of OSHA's statutory ability to concoct an "emergency temporary standard" (ETS) is an act of effrontery.

Sullum, in his detailed coverage, shows just how extraordinary and inapt the reliance upon the ETS is. The COVID-19 crisis cannot justify the mandate through the legal mechanism chosen. It is fairly obvious that, as the court put it, Biden's decree "grossly exceeds OSHA's statutory authority."

Sullum quotes another judge's concurring opinion to the effect that even a congressionally legislated mandate would be controversial, constitutionally.

But breathe easy: Nancy Pelosi's and Chuck Schumer's Congress has no interest in creating a rational and constitutional response to the crisis.

And *our* Congress? Well, it doesn't exist.

This is Common Sense. I'm Paul Jacob.