

The Supreme Court - January 13, 2022

by Ian Blodger

Today, the Supreme Court of the United States issued the following decisions:

National Federation of Independent Businesses v. Department of Labor, Nos. 21-244, 21-247: Numerous challenges were brought against the emergency rule issued on November 5, 2021, by the Occupational Safety and Health Administration (“OSHA”), requiring “covered workers [to] receive a COVID-19 vaccine” except for “workers who obtain a medical test each week at their own expense and on their own time, and also wear a mask each workday.” The Fifth Circuit initially stayed OSHA’s rule. However, the Sixth Circuit—the circuit in which the challenges were consolidated—dissolved the stay, “holding that OSHA’s mandate was likely consistent with the agency’s statutory and constitutional authority.” The Supreme Court then agreed to hear various applications challenging the Sixth Circuit’s decision, holding expedited argument on January 7, 2022. Today, the Supreme Court in a per curiam opinion entered a stay of OSHA’s rule, concluding that the challengers “are likely to succeed on the merits of their claim that the Secretary lacked authority to impose the mandate.” The Court reasoned that OSHA’s rule was not limited to regulating a “work-related danger[]” because the spread of COVID-19 is a kind of “universal risk” that is “no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases,” and therefore OSHA’s rule exceeded its authority. Justices Gorsuch, Thomas and Alito concurred, writing separately to express their view that Congress had not clearly granted OSHA the authority to make decisions of “vast national significance,” and if it had done so, such a grant of authority may have violated the nondelegation doctrine. Justices Breyer, Sotomayor, and Kagan dissented, arguing COVID-19 is a “new hazard” that poses a “grave danger to millions of employees,” and therefore OSHA is authorized to issue an emergency rule under the Occupational Safety and Health Act as it is “‘necessary’ to address the danger of COVID-19.”

View the Court's [decision](#).

Biden v. Missouri, Nos. 21-240, 21-241: On November 5, 2021, the Secretary of Health

Related People

- Ian Blodger

Related Capabilities

- Appellate

and Human Services, who administers the Medicare and Medicaid programs issued an interim final rule that “in order to receive Medicare and Medicaid funding, participating facilities must ensure that their staff—unless exempt for medical or religious reasons—are vaccinated against COVID-19.” Several states challenged the rule, and two District Courts issued preliminary injunctions against its enforcement. The Fifth and Eighth Circuits affirmed the injunctions, and the Government sought relief from the Supreme Court. Today, the Supreme Court, following an expedited argument, issued its opinion, holding that “the Secretary did not exceed his statutory authority in requiring that, in order to remain eligible for Medicare and Medicaid dollars, the facilities covered by the interim rule must ensure that their employees be vaccinated against COVID-19.” In reaching this conclusion, the Supreme Court noted that the Secretary has previously issued a “longstanding litany of health-related participation conditions” which fall within “the very same statutory authorities at issue here....” Justice Thomas dissented, joined by Justices Alito, Gorsuch, and Barrett, arguing that the statutes at issue only enable the Secretary to issue rules for “administering” Medicare and Medicaid and insurance programs under the Medicare Act, and that these statutes do not “empower it to impose a vaccine mandate.” The dissent further argued that if “Congress had wanted to grant [the Center for Medicare and Medicaid Services] power to impose a vaccine mandate across all facility types, it would have done what it has done elsewhere—specifically authorize one.” Justice Alito wrote separately, joined by Justices Thomas, Gorsuch, and Barrett to argue that the CMS could not rely on emergency rulemaking authority where it had delayed two months before releasing its rule.

View the Court's [decision](#).

Babcock v. Kijakazi, No. 20-480: This case involves a dispute over retirement benefits for certain members of the National Guard who function both as civilians and military employees. The petitioner, Mr. David Babcock, was a “military technician (dual status)” who worked both as a test pilot and pilot instructor and also served in the National Guard. After Mr. Babcock retired, the government cut his Social Security benefits under a statutory “windfall elimination provision” and reduced the benefits to reflect his receipt of civil-service pension payments for his work as a technician. The District Court upheld the agency’s decision, and the Sixth Circuit affirmed. Today, the Court, in an 8-1 opinion by Justice Barrett, affirmed. The Court held that the “windfall elimination provision” does apply to dual-status technicians like Babcock, rejecting Babcock’s argument that the pension fell under an exception. Justice Gorsuch filed a lone dissent.

View the Court's [decision](#).