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Judge Suspends Federal Contractor Vaccine Mandate Nationwide

On December 7, 2021 a U.S. District Court judge in Georgia granted a nationwide preliminary injunction putting a hold on the Biden Administration's implementation of its Executive Order (EO 14042) mandating vaccines for all federal contractors and subcontractors. Under the EO, employees of contractors and subcontractors were required to be fully vaccinated by no later than January 4, 2022, at the risk of losing their jobs. Yesterday's ruling came on the heels of a previous ruling by a U.S. District Court judge in Kentucky who granted a similar injunction but only made the injunction effective in Kentucky, Ohio and Tennessee. Both judges followed similar reasoning, and together they pose a significant challenge for the Administration to overcome.

Here are a few key excerpts from the decision:

As another Court that has preliminarily enjoined the same measure at issue in this case has stated, "[t]his case is not about whether vaccines are effective. They are." *Kentucky v. Biden*, No. 3:21-cv-55, 2021 WL 5587446, at *9 (E.D. Ky. Nov. 30, 2021). Moreover, the Court acknowledges the tragic toll that the COVID-19 pandemic has wrought throughout the nation and the globe. However, even in times of crisis this Court must preserve the rule of law and ensure that all branches of government act within the bounds of their constitutionally granted authorities. Indeed, the United States Supreme Court has recognized that, while the public indisputably "has a strong interest in combating the spread of [COVID-19]," that interest does not permit the government to "act unlawfully even in pursuit of desirable ends." *Ala. Ass'n of Realtors v. HHS*, 141 S. Ct. 2485, 2490 (2021) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582, 585–86 (1952)). In this case, Plaintiffs will likely succeed in their claim that the President exceeded the authorization given to him by Congress through the Federal Property and Administrative Services Act when issuing Executive Order 14042. Accordingly, after due consideration of the motions, supporting briefs, responsive briefing, and the evidence and argument presented at the hearing,¹ the Court **GRANTS IN PART** and **DENIES IN**

PART the Motion to Intervene, (doc. 48), **GRANTS** ABC's Motion for Preliminary Injunction, (doc. 50), and **GRANTS** Plaintiffs' Amended Motion for Preliminary Injunction, (doc. 55).

"The Court finds that Plaintiffs have a likelihood of proving that Congress, through the language it used, did not clearly authorize the President to issue the kind of mandate contained in EO 14042, as EO 14042 goes far beyond addressing administrative and management issues in order to promote efficiency and economy in procurement and contracting, and instead, in application, works as a regulation of public health, which is not clearly authorized under the Procurement Act . . . Even if, however, EO 14042 did not trigger the specific requirement that Congress "speak clearly" in authorizing the challenged executive action, the Court additionally finds that Plaintiffs have a likelihood of proving that EO 14042 does not have a sufficient nexus to the purposes of the Procurement Act and thus does not fall within the authority actually granted to the President in that Act."

Government contracts experts have long wondered how far the federal government can go in attaching socio-economic "strings" to the process of the government's buying construction, goods and services. While these cases are by no means the last word on this topic, they are well worth reading and following as the cases move through the appeals process. In the meantime, government contractors and subcontractors need to watch developments closely.

The case is *The State of Georgia vs. Joseph R. Biden*, U.S.D.C. SD of Georgia, Civil Action No.: 1-21-cv-163.

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