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NCLA Amicus Brief Asks Full Fifth Circuit to Scrap Federal Employee Vaccine Mandate

Feds for Medical Freedom, et al. v. Joseph R. Biden, Jr., et al.

Washington, DC (September 6, 2022) – The New Civil Liberties Alliance and its clients from the class-action lawsuit, [James Joseph Rodden, et al. v. Dr. Anthony Fauci, et al.](#), have filed an [amicus curiae brief](#) in *Feds for Medical Freedom v. Biden*, a similar case seeking to overturn the vaccine mandate imposed on federal workers. NCLA and the *Rodden* plaintiffs urge the *en banc* Court of Appeals for the Fifth Circuit to affirm the U.S. District Court for the Southern District of Texas’s original injunction against President Biden’s unprecedented vaccine mandate. NCLA’s brief points to the Centers for Disease Control and Prevention’s (CDC) recent [guidance](#) advising all federal agencies: (1) to “pause” collecting employees’ vaccine information; and (2) to treat vaccinated and unvaccinated employees the same.

In April, a split Fifth Circuit panel [vacated](#) the nationwide injunction against the federal employee vaccine mandate, ruling that the Civil Service Reform Act of 1978 (CSRA) precludes district court review of the federal employees’ challenges. The panel’s flawed decision shields unlawful government mandates against federal employees from judicial review and would permit only case-by-case administrative adjudication of class-wide constitutional violations. Refusing to review these executive employment decisions except in the context of individual disciplinary proceedings opens the door to arbitrary and oppressive government action designed to intimidate employees with the loss of their careers. More than 10 million federal employees and contractors are currently required to surrender their healthcare autonomy as a condition of working for the federal government.

In its guidance issued on August 17, 2022, the Safer Federal Workforce Task Force instructed all federal agencies to no longer “require documentation of vaccination status from employees ... [or] ask about the vaccination status of onsite contractor employees and visitors.” As the document explains, “safety protocols *will not vary* based on vaccination status or otherwise depend on vaccination information.” In light of this changed guidance, and the fact that the Biden Administration will no longer be “requiring, requesting, or collecting vaccination status information” about federal employees, it is inexplicable why the government continues to appeal this injunction.

The panel’s decision, if allowed to stand, would abdicate the Judiciary’s role in policing the boundary between the executive and legislative branches and thereby protecting individuals from the exercise of unlawful governmental power. The balance of harms here is clear: should the judgment below be reversed, Appellees and *amici*, all of whom are now protected by the injunction, will suffer an irreparable injury to their person, dignity, and reputation, and all without discernible benefit to the government. Having discarded the panel’s decision, the *en banc* Court should affirm the district court’s order enjoining the federal employee vaccine mandate.

NCLA released the following statement:

“This injunction has protected our clients, and the Court had jurisdiction to hear the case and enter it. We trust the Fifth Circuit will make sure that the constitutional rights of federal employees are heard and vindicated in Article III courts and not allowed to languish in piecemeal administrative proceedings.”

— **John J. Vecchione, Senior Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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