

## Georgia District Court Places Nationwide Stay on the Government Contractor Vaccination Mandate

Alert

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By Susan Warshaw Ebner and Eric Whytsel

Following an expedited briefing schedule and hearing, the U.S. District Court for the Middle District of Georgia has issued a nationwide preliminary injunction staying implementation of the government contractor vaccination mandate under Executive Order (EO) 14042. The court determined that the states of Georgia, Alabama, Idaho, Kansas, South Carolina, Utah and West Virginia, and the Associated Builders and Contractors, Inc. (ABC) had standing to bring suit against the vaccination mandate. In its decision, the court held:

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.

Finding that the president exceeded his authority granted under the Federal Property and Administrative Services Act (FPASA), the court declined to address the other potentially viable grounds alleged by plaintiffs to support the grant of a preliminary injunction, including (1) the Safer Workforce Task Force Guidance and FAR Deviation Clause were issued without complying with the Administrative Procedure Act’s notice and comment requirements and (2) if the FPASA does authorize EO 14042, then both are unconstitutional under the non-delegation doctrine and because they exceed Congress’ authority and

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intrude on state sovereignty.

This national ruling follows on the heels of last Friday's preliminary injunction granted on similar grounds that was limited to the states of Kentucky, Tennessee and Ohio.

The impact of this ruling cannot be understated as many government contractors are working to persuade their employees to commence vaccination in order to be fully vaccinated by January 18, 2022. Moreover, as the court noted, the administrative processes required of plaintiffs to comply with the requirements of the vaccination mandate are "incredibly time-consuming processes... complying with a regulation later held invalid almost always produces the irreparable harm of nonrecoverable compliance." It further found that:

In contrast, declining to issue a preliminary injunction would force Plaintiffs to comply with the mandate, requiring them to make decisions which would significantly alter their ability to perform federal contract work which is critical to their operations. Indeed, it appears that not granting an injunction could imperil the financial viability of many of ABC's members. Additionally, requiring compliance with EO 14042 would likely be life altering for many of Plaintiffs' employees as Plaintiffs would be required to decide whether an employee who refuses to be vaccinated can, in practicality, be reassigned to another office or another task or whether the employee instead must be terminated. "[A]ny abstract 'harm' a stay might cause . . . pales in comparison and importance to the harms the absence of a stay threatens to cause countless individuals and companies."

Stay tuned as we will further analyze the impacts and follow up actions of the administration in light of these rulings.

## CONTACTS

Susan Warshaw Ebner

Eric Whytsell

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