



## NATIONAL HEALTH FREEDOM ACTION

### Biden Federal Worker Vaccine Mandate Stopped by District Court in Texas!



Many judges around the nation, from the trial courts to the Supreme Court, have stopped parts of President Biden's executive vaccine policies. The president ordered a variety of COVID-19 vaccine mandates, including the OSHA rule for workers at larger businesses, the Medicare/Medicaid worker rule, the federal contractor mandate, and the federal worker mandate.

On January 21, 2022, the federal worker mandate was halted. A federal trial court in Texas preliminarily ruled that the federal worker rule is illegal. The case was brought by FEDS 4 MEDICAL FREEDOM (FEDS) a grassroots coalition of workers formed to fight both the federal worker rule and the contractor rule. According to FEDS, **"the government should not fire workers because of their health conditions or medically-informed health care decisions."**

#### **Federal Worker Mandate is "a Bridge too Far"**

**Judge Jeffery Vincent Brown began by noting that this case was not about** whether people should get vaccinated against Covid-19 or about whether the government has the power to mandate vaccination of its employees, but rather about **"whether the President can, with the stroke of a pen and without the input of Congress, require millions of federal employees to undergo a medical procedure as a condition of their employment. That, under the current state of the law as just recently expressed by the Supreme Court, is a bridge too far."** In other words, in our system of government, the Congress is supposed to make laws. Yet here Biden is violating the separation of powers that defines American government. Judge Brown describes the federal worker mandate as requiring **"that all federal employees be vaccinated—or obtain a religious or medical exemption—or else face termination."**

## An Unwanted Medical Procedure that Cannot be Undone

Judge Brown noted that the preliminary injunction sought by FEDS is, “**an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.**” He supports giving that relief by citing the Fifth Circuit saying that it has already been determined that the Hobson’s choice employees face **between “their job(s) and their job(s)”** amounts to irreparable harm. He concludes that regardless of what the conventional wisdom may be concerning vaccination, “**no legal remedy adequately protects the liberty interests of employees who must choose between violating a mandate of doubtful validity or consenting to an unwanted medical procedure that cannot be undone.**”

### “Ultra Vires”

FEDS argued that Biden’s action was “**ultra vires,**” Latin for “**beyond the powers.**” The government countered that argument by claiming that there are three different statutes or laws authorizing Biden’s order. The first allows rules for “**applicants**” for civil service. Brown noted that this text does not refer to federal employees. The second law allows that the “**President may prescribe rules governing the competitive [civil] service.**” Yet this broad statement is followed by particulars which show this power is limited: “**it becomes evident that the ‘rules’ the President may prescribe under [the statute] are quite limited. For example, he may exempt certain employees from civil-service rules and from certain reports and examinations, and he may prohibit marital and disability discrimination within the civil service. But not even a generous reading of the text provides authority for a vaccine mandate.**”

### Supreme Court OSHA Decision Supports FEDS

The **third statute relied on** by the government says that the “**The President may prescribe regulations for the conduct of employees in the executive branch.**” The government argues that being vaccinated is “**conduct.**” But FEDS counters that argument by pointing out that the vaccination is a “**status**” and is, “**one that is untethered to job requirements, no less.**” The court agreed with FEDS that if vaccination is “**conduct,**” it is not *workplace* conduct. And the court said neither the statute, “**nor any traditional notion of personal liberty would tolerate such a sweeping grant of power.**” Judge Brown relies on the Supreme Court’s OSHA decision to bolster the idea that getting a vaccine is not workplace conduct. The Supreme Court said that OSHA can set work safety standards, but not create “**broad public health measures.**” In Brown’s view, the high court has, “**expressly held that a COVID-19 vaccine mandate is not an employment regulation. And that means the President was without statutory authority to issue the**

federal worker mandate” in the present case.

### **Loss of Vital Services Workers**

**The government also argues** that even without the three statutes, Biden has the power to order employees vaccinated under Article II of the US Constitution. But Brown responds by saying that following this logic there would be, **“no limiting principle to the reach of the power they insist the President enjoys. For its part, this court will say only this: however extensive that power is, the federal-worker mandate exceeds it.”** Weighing the equities, the judge says that **“any harm to the public interest by allowing federal employees to remain unvaccinated must be balanced against the harm sure to come by terminating unvaccinated workers who provide vital services to the nation.”**

### **Liberty to Make Intensely Personal Decisions**

**Brown determined that the balance of the equities tips in favor of the workers** and quotes the Fifth Circuit Court of Appeals: **“[t]he public interest is also served by maintaining our constitutional structure and maintaining the liberty of individuals to make intensely personal decisions according to their own convictions.”** Brown made his order applicable all over the USA. Lead plaintiff FEDS has over 6,000 members across all states, and he feared that, **“limiting the relief to only those before [it] would prove unwieldy and would only cause more confusion.”**