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NCLA Amicus Brief Supports Fifth Circuit En Banc Review of the Federal Employee Vaccine Mandate

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

Washington, DC (June 1, 2022) – The New Civil Liberties Alliance filed an [amicus curiae brief](#) Tuesday on behalf of clients it represents in the class-action lawsuit [James Joseph Rodden, et al. v. Dr. Anthony Fauci, et al.](#), who have acquired natural immunity to Covid-19. NCLA filed the brief in *Feds for Medical Freedom v. Biden*. It supports a petition for Fifth Circuit *en banc* review after a split Fifth Circuit panel vacated a nationwide injunction issued by U.S. District Judge Jeffrey Brown against the Federal Employee Vaccine Mandate.

The panel erred in ruling that the lower court lacked jurisdiction in the case due to the Civil Service Reform Act of 1978 (CSRA). The panel failed to appreciate that the CSRA is not so broad as to cover every dispute about governmental power over individuals who merely happen to be federal employees. Nothing in the CSRA’s text or structure suggests Congress meant to preclude constitutional challenges to minor disciplinary suspensions.

The President of the United States and the agencies he directs have no power to direct personal medical decisions of federal employees. This is particularly so when a mandated vaccine 1) does not prevent transmission of Covid-19 to other employees, 2) is only authorized for emergency use, and 3) is less efficacious than natural immunity in preventing Covid-19 reinfections. NCLA’s *amicus* brief argues that *Feds for Medical Freedom* merits *en banc* consideration, as it poses a constitutional challenge to the President’s assertion of vast power to control invasive, irreversible medical decisions of individual federal employees through mere workplace regulations.

Like employee members of *Feds for Medical Freedom*, *amici*’s constitutional (and statutory) rights to remain free from unwanted medical treatment and violation of their bodily autonomy will be infringed if the Federal Employee Vaccine Mandate remains in effect. The full Fifth Circuit bench should take up this case and decide whether the President can order over 10 million individuals—representing both federal employees and contractors—to surrender their healthcare autonomy as a condition of working for the federal government.

NCLA released the following statements:

“Our clients have been protected by the injunction issued in the same district court as in the *Feds for Medical Freedom* case. Judge Brown’s ruling was correct, and a liberty-limiting decision such as the panel made should be reviewed by the entire Fifth Circuit bench to ensure that it is in concert with established circuit precedent.”

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

“The panel’s decision vacating the injunction jeopardizes not only the fundamental rights of our clients, but also the important role of the courts in our system of government. For these reasons, as well as because the panel’s decision is in significant tension with prior decisions of the same court, the decision should be reviewed by the full Fifth Circuit Court of Appeals.”

— **Greg Dolin, 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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