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Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA Decries Govt Effort to Moot Suit Against Biden’s Illegal Federal Contractor Vaccine Mandate

Vanderstelt, et al. v. Joseph R. Biden, et al.

Washington, DC (August 23, 2023) – Today, the New Civil Liberties Alliance filed a [brief](#) opposing the government’s motion to dismiss NCLA’s *Vanderstelt v. Biden* lawsuit against the Biden Administration’s unconstitutional Covid-19 vaccine mandate for government contractors. President Biden withdrew the mandate in May, but still claims the authority to reimpose it at his whim. NCLA asks the U.S. District Court for the Western District of Michigan not to dismiss this suit against a major abuse of executive power that could resume at any moment, especially as Covid-19 restrictions re-emerge at companies and institutions across the country.

The federal contractor mandate required Plaintiffs to take a vaccine without their consent—and for those with naturally acquired immunity, against the medical advice of experts. This measure disregarded their statutory right to informed consent and trampled on their constitutional rights to bodily integrity and to refuse unwanted medical care. The mandate was one of several administrative actions announced in September 2021 that were aimed at coercing about 100 million Americans to obtain a Covid-19 vaccine, including employees of private companies, healthcare facilities, and the federal government. The government withdrew the federal contractor mandate, so it now claims NCLA’s lawsuit against the mandate is moot. But it simultaneously defends the mandate as perfectly legal. Since Biden could unilaterally reinstate the mandate quite easily, NCLA argues the suit remains contested.

The President cannot exercise such sweeping authority under the guise of “procurement” without clear and explicit congressional authorization. Neither Congress nor the Procurement Act gave the President the power to impose the mandate in the first place, nor re-establish it in the future. Presidential policies prescribed under the Procurement Act are only valid if there’s a “nexus between the regulations and some delegation of requisite legislative authority by Congress.” There has never been one here. Under the “unconstitutional conditions” doctrine, the government may not impair Plaintiffs’ right to refuse medical care through subtle forms of coercion.

The Fifth, Sixth, and Eleventh Circuits affirmed preliminary injunctions against the federal contractor mandate. But no final decision has declared the mandate to be unlawful. The Ninth Circuit, however, held that the contractor mandate was lawful. By keeping NCLA’s lawsuit alive and ultimately ruling against the mandate, the U.S. District Court for the Western District of Michigan can ensure a final court judgment against abuse of executive power.

NCLA released the following statement:

“It would be one thing if the government agreed with the several courts of appeal that held the Contractor Mandate exceeds the President’s authority. But instead it is vigorously defending the legality and wisdom of the Mandate, and thus the President’s power to reimpose it at his whim. The government cannot have its cake and eat it too. A challenge against a withdrawn policy is not moot when the government insists on having unfettered ability to reimpose it.”

— **Sheng Li, Litigation Counsel, NCLA**

For more information visit the case 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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