

Eleventh Circuit Concludes Federal Contractor Vaccine Mandate Will Likely Fail

AUTHOR: JAMES KEANEY

Some background is in order to understand the Court's recent decision. Last year, seven states (including Kansas) sued to stop the federal contractor vaccine mandate. The district court entered a nationwide injunction of the mandate, finding it likely exceeded the President's authority under the Procurement Act.

The Court of Appeals agreed, after looking carefully at the history of the Procurement Act. "Nothing in the Act contemplates that every executive agency can base every procurement decision on the health of the contracting workforce." The Court re-emphasized the impetus of the law: creating an "economical and efficient system" for federal contracting, not establishing health standards for contractors' employees.

However, Court concluded the district court had relied on "improper considerations" in issuing a nationwide injunction. It thus limited the injunction to attempts to enforce the mandate against the plaintiffs in the case. It also affirmed the injunction to the extent it bars the federal government from considering a bidder's compliance with the mandate when deciding whether to grant a contract to a plaintiff in the case or to a nonparty bidder.

But with those limitations in mind, the Court clarified "the federal government is no longer enjoined from enforcing the mandate in new and existing procurement contracts between the federal government and nonparties, or in the selection process following solicitations in which no plaintiff participates as a bidder."

The Court's 45-page majority opinion is detailed in its legal analysis, yet also accompanied by a 20-page dissent that would have concluded the President did have the authority to issue the mandate under the Procurement Act.

The result here is that the federal contractor vaccine mandate is applicable to some, but not all, federal contractors (for now). But this case will almost certainly make its way up to the Supreme Court next. Stay tuned for further developments.