

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

TERRY CONNER; JOSEPH DODSON;
BARBARA BACHMAN; and MICHAEL SCHIESL,

Plaintiffs,

v.

JOSEPH R. BIDEN in his official capacity as President
of the United States, et al.,

Defendants.

No. 6:21-CV-074-H

**PLAINTIFFS' MOTION FOR EXPEDITED BRIEFING SCHEDULE AND
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

Plaintiffs Terry Conner, Joseph Dodson, Barbara Bachman, and Michael Schiesl (collectively the "3M Plaintiffs"), pursuant to Fed. R. Civ. P. 65 and by and through undersigned counsel, hereby submit their (1) motion for expedited briefing schedule, (2) motion for temporary restraining order, and (3) motion for preliminary injunction, along with their supporting brief filed contemporaneously herewith.

The 3M Plaintiffs are employed by the 3M Corporation ("3M") at its Brownwood, Texas facility (Conner, Dodson, and Bachman) and its Hutchinson, Minnesota facility (Schiesl). 3M is a covered federal contractor under President Biden's EO 14042, commonly known as the federal contractor vaccine mandate, and the 3M Plaintiffs are covered employees under EO 14042.

As explained more fully in their supporting brief, although the recent nationwide injunction issued by a Georgia federal district court has halted covered federal contractors from requiring their employees take the vaccination against COVID-19, the injunction does not enjoin the federal government defendants and covered federal contractors from compelling their employees to disclose their vaccination status in accordance with EO 14042, on or before January 4, 2022.

Although 3M acknowledges the nationwide injunction as applied to not requiring its employees take the COVID-19 vaccination job at this time, 3M nevertheless is compelling the 3M Plaintiffs and all 3M employees to disclose their vaccination status via 3M's third-party platform, ShareMy.Health, in accordance with 3M's obligations as a covered federal contractor under the plain meaning of EO 14042 and related federal Task Force Guidance.

Recent COVID-19 vaccination correlation studies by the Kaiser Family Foundation ("KFF"), a nonprofit organization focusing on national health issues, as well as the U.S. role in global health policy, have shown that an individual's vaccination status is a strong predictor of one's political affiliation.

The 3M Plaintiffs do not wish to disclose their vaccination status to 3M and the federal government defendants because they believe such disclosure of their status amounts to disclosure of their disfavored political beliefs and will subject them to threats, reprisal, harassment, and retaliation from the government defendants and from 3M, including termination of their employment.

The First Amendment to the United States Constitution protects the right of individuals to not speak or disclose certain information where they may be punished for their political affiliation. *See Elrod v. Burns*, 427 U. S. 347, 355 (1976). EO 14042's broad sweep requiring covered federal contractor employees to disclose their vaccination status is not narrowly tailored to achieve the government's asserted interest in promoting economy and efficiency in the procurement of federal contracts. *See generally Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021) (holding unconstitutional under the First Amendment a California law that required disclosure by charitable organizations of the identities of their major donors).

Further, EO 14042 is facially unconstitutional under the First Amendment because the vaccination status disclosure component does not form an integral part of the federal government's efforts to promote economy and efficiency in the procurement of federal contracts, and such interest does not justify EO 14042's required disclosure. *See id.*

Yesterday on December 13, 2021, this Court issued an Order instructing the 3M Plaintiffs that if they were seeking preliminary injunctive relief on or before January 4, 2022, the date the federal contractor vaccine mandate takes effect, they should file such motion and supporting papers for preliminary injunctive relief by today, December 14, 2021. *See* Doc. 21.

The 3M Plaintiffs seek temporary and preliminary injunctive relief from this Court enjoining the federal government defendants, and 3M acting in concert with

them in accordance with EO 14042, *see* Fed. R. Civ. P. 65(d)(2)(C), from compelling the 3M Plaintiffs to disclose their vaccination status or provide supporting documentation on or before January 4, 2022. This requested preliminary injunctive relief is uncovered by the nationwide injunction currently in effect and on appeal before the Eleventh Circuit Court of Appeals.

In addition to requiring and compelling the 3M Plaintiffs based in Texas and Minnesota to disclose their vaccination status in accordance with EO 14042, 3M is requiring all of its U.S. employees at covered 3M facilities and offices in 48 states (except in Delaware and Wyoming), two U.S. territories (Puerto Rico and Guam), and the District of Columbia, to disclose their vaccination status before January 4, 2022.

Accordingly, the 3M Plaintiffs seek this temporary and preliminary injunctive relief as applicable to these 48 states (including Texas and Minnesota), two U.S. territories, and the District of Columbia.

Finally, due to the upcoming holidays and the accelerated nature and acknowledgment by this Court that this a time-sensitive case (*see* Doc. 21), the 3M Plaintiffs seek an expedited briefing schedule requiring the federal government defendants to respond to this motion on or before Tuesday, December 21, 2021, and that the 3M Plaintiffs be allowed to file a reply by Thursday, December 23, 2021.

To the extent this Court wishes to hold an evidentiary hearing on or before January 4, 2022 in accordance with its schedule and due to local Texas counsel for the 3M Plaintiffs being out of town and national lead counsel located in another state,

the 3M Plaintiffs suggest that Monday, January 3, 2022 or Thursday December 30, 2021, be dates to hold such evidentiary hearing.

Dated: December 14, 2021

Respectfully Submitted,

/s/ Fernando M. Bustos

Fernando M. Bustos (Texas Bar. No. 24001819)
Bustos Law Firm, P.C.
1001 Main Street, Suite 501
Lubbock, Texas 79408
Telephone (806) 780-3976
fbustos@bustoslawfirm.com

and

Daniel R. Suhr, *Pro Hac Vice forthcoming*
M.E. Buck Dougherty III, *Pro Hac Vice forthcoming*
Jeffrey D. Jennings, *Pro Hac Vice forthcoming*
Liberty Justice Center
141 W. Jackson Blvd., Ste. 1065
Chicago, Illinois 60604
Telephone (312) 637-2280
dsuhr@libertyjusticecenter.org
bdougherty@libertyjusticecenter.org
jjennings@libertyjusticecenter.org

Attorneys for Plaintiffs

CERTIFICATE OF CONFERENCE

I certify that I was unable to send a draft copy of Plaintiffs' Motion and Brief to opposing counsel during business hours before filing same. Therefore, Defendants are presumed opposed.

Dated December 14, 2021.

By: /s/ Fernando M. Bustos
Fernando M. Bustos

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served to the Defendants in this case on December 14, 2021, as follows:

Jeffrey R. Haag,
Assistant United States Attorney,
Deputy Criminal Chief
700 George Mahon Federal Building
1205 Texas Avenue
Lubbock, TX 79401-4002

VIA EMAIL: jeffrey.haag@usdoj.gov

By: /s/ Fernando M. Bustos
Fernando M. Bustos