

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

David Donovan v. Brian Vance

No. 22-35474, United States Court of Appeals for the Ninth Circuit (June 13, 2023)

SUMMARY

The Ninth Circuit held that challenges to Executive Orders 14042 and 14043 (COVID-19 vaccine mandates for federal contractors and employees) became moot after the orders were revoked by Executive Order 14099. The court also held that claims for damages under the Religious Freedom Restoration Act (RFRA) were barred by sovereign immunity because RFRA does not waive the federal government's immunity. The court affirmed dismissal of RFRA claims, dismissed the remainder of the appeal as moot, and remanded with instructions to vacate the district court's orders on the non-RFRA claims.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Richard R. Clifton; William A. Fletcher; Sandra S. Ikuta
JURISDICTION	Federal
DECIDED	June 13, 2023
DOCKET	22-35474
DISPOSITION	affirmed in part, dismissed in part, remanded with instructions to vacate in part
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of Washington, Thomas O. Rice, District Judge, Presiding. The district court denied Plaintiffs' motion for a TRO, preliminary injunction, and declaratory relief, and then dismissed the Second Amended Complaint with prejudice for failure to state a claim.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	Published
PARTIES	David G. Donovan et al. v. Brian Vance, Joseph R. Biden, Jennifer Granholm

TOPICS

- mootness
- sovereign immunity
- appellate jurisdiction
- executive orders
- presidential power

QUESTIONS PRESENTED

1. Whether the appeal is moot as to non-RFRA claims after the revocation of the challenged Executive Orders.
2. Whether Plaintiffs' RFRA claims for damages are barred by sovereign immunity.

HOLDINGS

1. The appeal is moot because the challenged Executive Orders have been revoked and no live controversy remains; the court cannot provide effective relief.
2. RFRA does not waive the federal government's sovereign immunity from damages, so the claims are dismissed for lack of jurisdiction.

FACTUAL BACKGROUND

Plaintiffs are a group of Federal contractor employees and Federal employees working for the Department of Energy. They challenged Executive Orders 14,042 and 14,043, which mandated COVID-19 vaccinations with medical and religious exemptions. Plaintiffs sought injunctive and declaratory relief to address allegedly imminent wrongful terminations for failure to comply with the vaccination requirements.

PROCEDURAL HISTORY

The district court denied Plaintiffs' motion for a temporary restraining order, a preliminary injunction, and declaratory relief. It then dismissed the operative Second Amended Complaint with prejudice for failure to state a claim and without leave to amend. Plaintiffs appealed both the interlocutory and final orders.

DISPOSITION

affirmed in part, dismissed in part, remanded with instructions to vacate in part

REMAND INSTRUCTIONS

The district court is instructed to vacate the portion of the orders on appeal addressing all non-RFRA claims.

CASES CITED

- West Virginia v. EPA, 142 S.Ct. 2587, 2609 (2022)
- NASD Disp. Resol., Inc. v. Jud. Council of State of Cal., 488 F.3d 1065, 1068 (9th Cir. 2007)
- Pub. Util. Comm'n of State of Cal. v. FERC, 100 F.3d 1451, 1458 (9th Cir. 1996)
- Ctr. For Biological Diversity v. Lohn, 511 F.3d 960, 964 (9th Cir. 2007)
- Mayes v. Biden, Mayes v. Biden, 67 F.4th 921 (9th Cir. 2023)
- Protectmarriage.com-Yes on 8 v. Bowen, 752 F.3d 827, 836 (9th Cir. 2014)
- Brach v. Newsom, 38 F.4th 6, 9 (9th Cir. 2022) (en banc), cert. denied, 143 S. Ct. 854 (2023)
- Oklevueha Native Am. Church of Haw., Inc. v. Holder, 676 F.3d 829, 840 (9th Cir. 2012)
- Daniel v. Nat'l Park Serv., 891 F.3d 762, 768 (9th Cir. 2018)

- Deschutes River All. v. Portland Gen. Elec. Co., 1 F.4th 1153, 1158 (9th Cir. 2021)
- United States v. Mitchell, 463 U.S. 206, 212 (1983)
- United States v. Munsingwear, Inc., 340 U.S. 36, 39 (1950)
- U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship, 513 U.S. 18, 25 n.3 (1994)
- City and Cnty. of San Francisco v. Garland, 42 F.4th 1078, 1088 (9th Cir. 2022)
- Camreta v. Greene, 563 U.S. 692, 698 (2011)
- Donovan v. Biden, 603 F. Supp. 3d 975, 985 (E.D. Wash. 2022)
- Donovan v. Vance, 576 F. Supp. 3d 816, 827 (E.D. Wash. 2021)