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United States Senate

COMMITTEES
ARMED SERVICES

AGRICULTURE, NUTRITION,
AND FORESTRY

HEALTH, EDUCATION,
LABOR, AND PENSIONS

VETERANS' AFFAIRS

October 26, 2021

The President
The White House
1600 Pennsylvania Ave NW
Washington, D.C. 20500

Dear Mr. President:

I write to express concerns that your administration's federal contractor vaccine mandate will have negative effects on our national security. Accordingly, I urge you to remove—or, at a minimum, delay and clarify—vaccination requirements on private companies and academic research institutions that are actively supporting the Department of Defense.

On September 9, 2021, you signed Executive Order 14042, entitled Ensuring Adequate COVID Safety Protocols for Federal Contractors (Order), which will force all employees working for a federal contractor or subcontractor and many public universities to take a COVID-19 vaccine by November 24, to be considered “fully vaccinated” by the December 8, 2021 deadline. Specifically, your Order applies broadly to any new or existing contract, requiring “Executive departments and agencies”—including the Department of Defense—to “ensure that contracts . . . include a clause that . . . specifies that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance . . . published by the Safer Federal Workforce Task Force.”

Soon thereafter, members of the Safer Federal Workforce Task Force (Task Force), none of whom were elected by the American people, issued a sweeping mandate for the implementation of your Order. Separately, the Federal Acquisition Regulation (FAR) Council released FAR Deviation Clause 52.223-99, entitled Ensuring Adequate Covid-19 Safety Protocols for Federal Contractors, which requires contractors and subcontractors to “comply with all guidance, including guidance conveyed through Frequently Asked Questions as amended” by the Task Force.

I share your desire to see our country through the COVID-19 pandemic as quickly as possible, and, I—like you—have elected to take the vaccine. But your administration's mandate is short-sighted, ill-conceived, and threatens our national security.

Firstly, your Order inappropriately removes doctors from an important health care decision for thousands of Americans and effectively forces certain employees to choose between taking a novel vaccine they do not want or continuing to support our men and women in uniform. That is a false and unnecessary choice.

Secondly, the American warfighter is ultimately harmed when skilled workers leave the defense contractor workforce, a foreseeable consequence of your Order. In 2020, more than 98,000 federal contracts of all types were awarded to contractors in my state of Alabama, which is home to more than 5,000 contractors who support the Department of Defense. Many of these firms are small, employing fewer than 100 workers but hiring a disproportionately high share of veterans. Together, they provide capabilities to the Pentagon that are often difficult to replicate. Losing any sizable share of a small firms' workforce means a direct reduction in the "economy and efficiency" that your Order purports to seek to advance. When these firms are unable to perform, our country is at risk.

Thirdly, the Order and related guidance create a scheme in which a bureaucratic task force can make significant changes to compliance requirements with little or no notice. It is absurd to use "FAQs" to dictate contract law in this case. That is a recipe for uncertainty, inequitable treatment, and a moving of regulatory goalposts that will decrease efficiency and drive-up costs. For example, the Order shifts compliance responsibilities to the contractor or subcontractor, which for small firms that lack large human resource departments means pulling one or more employees from their productive work to instead monitor for compliance and regulatory changes. This problem is only exacerbated by the national workforce shortage.

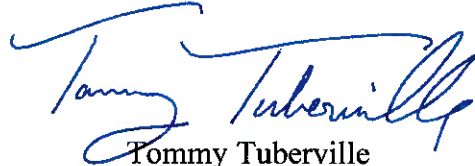
Fourthly, the definitions in the Order are so broad that they include public research institutions, hundreds of which are public state universities. Your Order, in effect, requires faculty and staff at state-operated universities that have no involvement in contracting activities to submit to a vaccine mandate that is not generated by the state and is unrelated to their job duties. That should change immediately.

Most importantly, the Order is unnecessary. It seeks to "decrease worker absences, reduce labor costs, and improve efficiency" of contractors and subcontractors. I am not aware of widespread problems in the defense community over the last 18 months regarding the delivery of critical products and services. Rather, smaller firms have worked with professionalism and creativity to get the job done while taking steps to ensure employee health and safety. It is quite possible that your mandate will result in individuals leaving the workforce to avoid the vaccine, thus, resulting in increased worker absences and labor costs, and decreased efficiency. During this time of increasing worry about the technological advances of near-peer adversaries, we should focus on policies that will ensure our national security interests are protected. This Order does the opposite.

Rather than government dictates, we should pursue a holistic strategy that emphasizes commonsense workplace safety policies, regular COVID-19 testing, vaccines for people who want them, easy to access antibody treatments, and the continued evaluation and approval of new pharmaceutical treatments. Mandates are not the answer; frank conversations between doctors and patients are.

I urge you to reverse course on the mandate for defense contractors to avoid foreseeable negative impacts on our national security.

Very truly yours,

A handwritten signature in blue ink that reads "Tommy Tuberville". The signature is fluid and cursive, with a large initial "T" and a long horizontal stroke extending across the top.

Tommy Tuberville
U.S. Senator

Cc: The Honorable Lloyd J. Austin III
U.S. Secretary of Defense