



MISSOURI SENATE
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January 5, 2021

The Honorable Eric Schmitt
Missouri Attorney General's Office
Supreme Court Building
207 W. High St.
Jefferson City, MO 65102

RE: *Joseph R. Biden, Jr., President of the United States, et al., Applicants, v. Missouri, et al.*

Dear Attorney General Schmitt,

On behalf of the undersigned members of the General Assembly, we write to express our support for your ongoing fight to preserve the United States Constitution, the rights of all Missourians, and the right to quality healthcare in rural areas. Specifically, we are aware that in the above-captioned case, you are preparing for oral argument next Friday. To aid your office in its preparation, we have included some thoughts regarding the disastrous effects that the federal health care vaccine mandate threatens to have in Missouri.

As your office noted in your lawsuit, on November 5, 2021, the Centers for Medicare and Medicaid Services ("CMS") issued an unprecedented interim Final Rule, entitled "Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination." This Final Rule imposed a mandate on fifteen different categories of healthcare facilities, requiring nearly every employee, volunteer, and third-party contractor at these facilities to receive a Covid-19 vaccine.

Just five days later, on November 10, 2021, working in conjunction with nine other states, you challenged this Final Rule in the United States District Court for the Eastern District of Missouri. We noted that you presented the Court with nine legal claims:

- 1) CMS—a federal agency—violated the Administrative Procedures Act ("APA") by failing to engage in reasoned decision-making before adopting an arbitrary and capricious mandate.

- 2) CMS violated the APA by acting in excess of its statutory rulemaking authority and intruded upon the Tenth Amendment's delegation of authority to the States for the regulation of public health.
- 3) CMS violated the APA by failing to engage in a Notice and Comment process, wherein the public would have been provided the opportunity to weigh-in on this sweeping mandate.
- 4) CMS violated the Social Security Act by failing to engage in a Notice and Comment process, wherein the public would have been provided the opportunity to weigh-in on this sweeping mandate.
- 5) CMS violated 42 U.S.C. § 1395(z) by failing to consult with appropriate State agencies, which must occur when new conditions of participation are created for Medicaid and Medicare facilities.
- 6) CMS violated 42 U.S.C. § 1302, which requires the Secretary of Health and Human Services to formulate a regulatory impact analysis of this Rule's effect on small rural hospitals—no such impact analysis was conducted.
- 7) This vaccine mandate is an unconstitutional condition placed on Missouri's receipt of federal funds.
- 8) This vaccine mandate is an unconstitutional attempt to commandeer the State's health care facilities.
- 9) This vaccine mandate is a violation of the Tenth Amendment and the principals of federalism in that it interferes with the State's police power of protecting the public health.

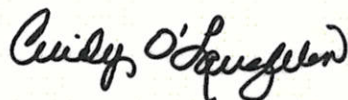
Thanks to your advocacy, the District Court granted Missouri and the nine other states a preliminary injunction, stopping the enforcement of CMS's vaccine mandate. CMS requested relief from the Eighth Circuit Court of Appeals, but relief was denied. CMS has now requested relief from the United States Supreme Court. As noted above, we understand that oral arguments are scheduled for January 7, 2022.

In our view, this vaccine mandate is but the latest attempt to alter the balance of power between the states and the federal government, stripping the states of their long-held ability to legislate public health. It is critical for the states to maintain dominion over legislation affecting public health, because such decisions often have disparate impacts on rural and urban areas that must be considered.

For example, while Missouri's urban centers are struggling to absorb the negative consequences of this vaccine mandate, the suffering in Missouri's rural counties will be even more severe. The Administrator of the Scotland County Care Center, a nursing home located in Memphis, Missouri, has stated that he is likely to lose almost a third of his workforce if this vaccine mandate is imposed, likely causing this nursing home to permanently shut its doors. This scene is likely to play out across Missouri's rural counties if this unconstitutional vaccine mandate is not struck down. Rural healthcare facilities will be forced to operate in crisis mode or, worse, be forced to close altogether.

There is a reason the Missouri General Assembly has not imposed such a one-size-fits-all mandate. Our federal system entrusts such prudential decisions to the states. We hope that you and your able solicitors will have an opportunity to emphasize these points in your response brief and at oral argument. The Missouri legislature applauds you for your vigilance and quick action last month, and stands behind you in your ongoing efforts to preserve access to quality healthcare across Missouri.

Sincerely,



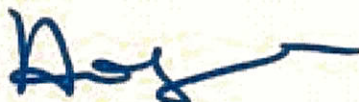
Senator Cindy O'Laughlin
18th District



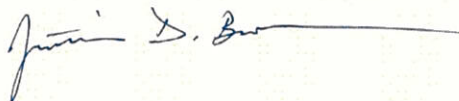
Senator Tony Luetkemeyer
34th District



Senator Jason Bean
25th District



Senator Holly Rehder
27th District



Senator Justin Brown
16th District



Senator Bill White
32nd District



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Senator Mike Bernskoetter
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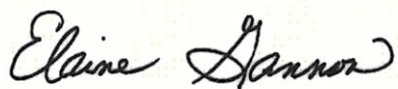
Senator Caleb Rowden
19th District



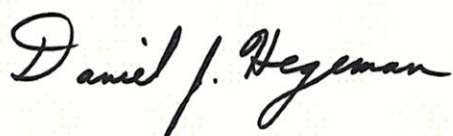
Senator Mike Moon
29th District



Senator Denny Hoskins
21st District



Senator Elaine Gannon
3rd District



Senator Dan Hegeman
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Senator Karla Eslinger
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