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**NICK SCHROER**

State Representative  
District 107

January 5, 2022

The Hon. Eric Schmitt  
Missouri Attorney General  
207 W. High Street  
Jefferson City, Missouri 65102

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

General Schmitt:

On behalf of the undersigned members of the Missouri General Assembly, we hereby express our support in your efforts to protect the constitutional rights of the people of Missouri regarding your position in the above captioned case. In an effort to assist your office before oral arguments this week, the undersigned would like to provide you with the following information.

As your office noted in your initial 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.

As you are aware, the District Court granted a preliminary injunction for Missouri and nine other states, effectively stopping the enforcement of the CMS vaccine mandate. Soon thereafter, CMS requested relief from the Eighth Circuit Court of Appeals, but thankfully, relief was denied. CMS has now requested relief from the United States Supreme Court. As noted above, oral arguments are now scheduled this week for January 7, 2022.

We are of the opinion that the vaccine mandate at issue is yet another blatant attack on federalism as it is aimed to alter the balance of power between the states and federal government. As a result, this will strip the states of their constitutional right and long-established ability to legislate areas of 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.

Missouri has experienced nursing homes, police departments, fire departments, hospitals, and many other public safety industries struggling with employment shortages solely related to these intrusive and tyrannical mandates. As a result, not only are our citizens' constitutional rights at stake, but their public safety is as well given forced terminations and vacancies because of the vaccine mandate. We are incredibly worried that if this vaccine mandate stands, our already depleted health care facilities will continue to see longer wait times for healthcare visits, hospitals unable to efficiently treat patients due to staffing shortages, and nursing homes unable to provide the type of care the residents in those facilities require.

Our General Assembly firmly believes in the separation of powers set forth in our founding documents. We passionately support states' rights and govern pursuant to the 10<sup>th</sup> Amendment. We understand that our federal system is designed to entrust such prudential decisions to the states. Our hope is that you and your able solicitors will have an opportunity to emphasize these points in your response brief and at oral argument.

We, the undersigned, applaud you for your vigilance and quick action to preserve our liberty and constitutional rights as soon as this mandate was issued. We proudly stand behind you in your ongoing efforts to preserve our rights, our liberty, and access to quality healthcare across Missouri.

Sincerely,



Nick Schroer  
State Representative, District 107

Willard Haley, District 58

Sara Walsh, District 50

Dean VanSchoiack, District 9

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