

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

STATE OF MISSOURI, *et al.*,

Plaintiffs,

v.

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

Defendants.

No. 4:21-cv-01329

**PLAINTIFF STATES' MOTION FOR EXPEDITED BRIEFING AND
CONSIDERATION OF THEIR MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to E.D. Mo. R. 4.01, Plaintiff States respectfully request the Court to order expedited briefing and consideration of their motion for a preliminary injunction filed today. ECF 6. To ensure effective relief and to maintain the status quo, Plaintiff States respectfully request that this Court issue its preliminary injunction ruling **by 5:00 p.m. (CT) on November 29, 2021**, to allow Plaintiff States time to seek emergency relief at the appellate level, if necessary, before Plaintiff States' citizens must receive the first (or single) COVID-19 vaccine dose or request a medical or religious exemption by December 6, 2021. Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555, 61,571, 61,573, 61,574 (Nov. 5, 2021).

In order to meet that November 29 deadline, and to provide the Court full briefing on the issues, Plaintiff States propose the following expedited briefing schedule and page limits:

- Defendants' opposition, not to exceed 50 pages, due November 19, 2021.
- Plaintiff States' reply, not to exceed 25 pages, due November 22, 2021.

- Pursuant to E.D. Mo. R. 4.02, oral argument, if the Court deems it necessary, on November 23 at the earliest, but no later than November 29.

ARGUMENT

This case involves a challenge by a coalition of ten States to the Centers for Medicare and Medicaid Services’ Interim Final Rule, also referred to as the “CMS vaccine mandate,” imposing an unprecedented federal vaccine mandate on nearly every full-time employee, part-time employee, volunteer, and contractor working at a wide range of healthcare facilities receiving Medicaid or Medicaid funding.

The CMS vaccine mandate threatens with job loss millions of healthcare workers who risked their lives in the early days of the COVID-19 pandemic to care for strangers and friends in their communities. Critically, the CMS vaccine mandate also threatens to exacerbate an alarming shortage of healthcare workers, particularly in rural communities, that has already reached a crisis point. Indeed, the circumstances in the Plaintiff States—facts that CMS, which skipped notice-and-comment rulemaking, did not fully consider—foreshadow an impending disaster in the healthcare industry. By ignoring the facts on the ground and unreasonably dismissing concerns about workforce shortages, the CMS vaccine mandate jeopardizes the healthcare interests of rural Americans.

The CMS vaccine mandate will impose several species of concrete harms on Plaintiff States in their sovereign, quasi-sovereign, and proprietary capacities. These harms are well documented. *See, e.g.*, Part II, Memorandum in Support of Preliminary Injunction (discussion of irreparable harm). Plaintiff States have moved expeditiously in response to the federal government’s aggressive timeline right before the holidays. Plaintiff States filed the complaint in this case on November 10, 2021—three business days after the mandate was published in the

Federal Register on November 5. *See* ECF 1. And they filed their preliminary injunction motion today, i.e., the next business day. *See* ECF 6.¹

Plaintiff States respectfully request a ruling on their preliminary-injunction motion by November 29, to ensure they can receive effective relief from either this Court or at the appellate level before the federal government’s self-imposed December 6 deadline. *Cf. Texas v. Biden*, No. 2:21-CV-067-Z, 2021 WL 3603341, at *28 (N.D. Tex. Aug. 13, 2021) (staying nationwide permanent injunction “for 7 days to allow the federal government time to seek emergency relief at the appellate level”); *see, e.g., Navigare Cruise Partners, LLC v. Lazaroff*, 2021 WL 4168207, at *3 (E.D. Mo. Sept. 14, 2021) (“The primary function of a preliminary injunction is to preserve the status quo until, upon final hearing, a court may grant full, effective relief.”) (emphasis omitted) (quoting *Kan. City S. Transp. Co. v. Teamsters Local Union #41*, 126 F.3d 1059, 1066 (8th Cir. 1997) (quoting another source)).

Expedited consideration here would also be warranted under the Court’s well-established “inherent authority” to manage its docket “with a view toward the efficient and expedient resolution of cases.” *Carlisle v. Emerson Elec. Co.*, No. 4:20CV1023 HEA, 2021 WL 833993, at *1 (E.D. Mo. Mar. 4, 2021) (cleaned up). Vaccination takes weeks, a fact that the holidays complicate. And healthcare facilities will need time to ensure compliance. Absent preliminary relief by November 29, healthcare facilities receiving Medicaid or Medicaid funding—including state-run facilities—will have to demand that covered employees, volunteers, and contractors be vaccinated. Furthermore, employees, volunteers, and contractors will have to be vaccinated, quit,

¹ The Court was closed on November 11, 2021, in observance of Veterans Day. Federal Holidays 2021, U.S. District Court, Eastern District of Missouri, <https://www.moed.uscourts.gov/federal-holidays> (last accessed on Nov. 11, 2021).

or try to receive an accommodation, if applicable. These individuals will have to decide to stay and be vaccinated—possibly against their wishes if their job wasn’t on the line—or quit. Those are harms that are incredibly difficult, if not possible, to undo and strike straight at the interests the Plaintiff States seek to vindicate with this suit. *See Salt Lake Trib. Pub. Co., LLC v. AT & T Corp.*, 320 F.3d 1081, 1105 (10th Cir. 2003) (“Irreparable harm, as the name suggests, is harm that cannot be undone, such as by an award of compensatory damages or otherwise.”); *see also Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 538 (N.D. Cal. 2017) (federal government’s “coercive” executive order violated Tenth Amendment and thus constituted “constitutional injury sufficient to establish standing and irreparable harm” for purposes of a preliminary injunction); ECF 1, ¶¶ 249-57 (alleging violation of Tenth Amendment). Preliminary relief would ameliorate the harms Plaintiff States will face due to the CMS vaccine mandate.

For these reasons, there is ample good cause for Plaintiff States’ request for expedited consideration of their motion for preliminary injunction. *See Thomas v. Lombardi*, 2013 WL 3243655, at *1 (E.D. Mo. June 26, 2013) (“Because of facts alleged in plaintiff’s complaint, as well as in his motion for preliminary injunction, the Court believes that an expedited briefing schedule is necessary in this matter.”).

To be sure, the schedule Plaintiff States propose here is accelerated; but so is the timeline they are up against. That timeline was set by the federal government, so its protests should receive no weight. In other words, any claim of prejudice by the government would be entirely self-inflicted. *Cf. Texas v. Biden*, 10 F.4th 538, 558 (5th Cir. 2021) (per curiam) (self-inflicted hardship does “not count”). And there is no reason to believe that Defendants could not file an opposition in one week; this week alone they’ve been able to file *two* different responses in two different cases involving the OSHA vaccine mandate published the same day as the CMS vaccine mandate.

Accord Missouri v. Biden, No. 21-3494 (8th Cir. Nov. 10, 2021) (granting motion for expedited consideration of stay motion and giving federal government until the next business day to respond); *BST Holdings, LLC v. OSHA*, 2021 WL 5166656, at *1 (5th Cir. Nov. 6, 2021) (per curiam) (giving federal government only two days to file response to motion for permanent injunction).

CONCLUSION

For all these reasons, Plaintiff States respectfully request that the Court order that:

- Defendants' opposition, not to exceed 50 pages, be filed by November 19, 2021.
- Plaintiff States' reply, not to exceed 25 pages, be filed by November 22, 2021.
- Oral argument, if the Court deems it necessary, on November 23 at the earliest, but no later than November 29.

Dated: November 12, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on November 12, 2021, a true and correct copy of the foregoing and any attachments were filed electronically through the Court's CM/ECF system, to be served on counsel for all parties by operation of the Court's electronic filing system and to be served on those parties that have not appeared who will be served in accordance with the Federal Rules of Civil Procedure by mail or other means agreed to by the party.

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