

No. 21A240

In the Supreme Court of the United States

JOSEPH R. BIDEN, JR., PRESIDENT OF THE UNITED STATES, ET AL.,

Applicants,

v.

STATE OF MISSOURI, ET AL.,

Respondents.

ON APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND BRIEF OF DOCTORS FOR DISASTER PREPAREDNESS AND EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND IN OPPOSITION TO APPLICATION FOR A STAY OF THE INJUNCTION

ANDREW L. SCHLAFLY
939 OLD CHESTER ROAD
FAR HILLS, NJ 07931
(908) 719-8608
aschlafly@aol.com

Counsel for Amici Curiae

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Amici respectfully move for leave to file the enclosed brief as *amici curiae* in opposition to the application for a stay of the injunction issued by the United States District Court for the Eastern District of Missouri, including leave to file without ten days' notice to or consent by the parties, and leave to file in 8½- by 11-inch format. In light of the expedited briefing schedule and the intervening holidays, it was not possible to obtain consent from the parties prior to filing, but counsel for *Amici* has informed counsel for the parties of his intention to file this motion and brief.

Amici are the Doctors for Disaster Preparedness, a group of scientists (including physicians) founded in 1984, and Eagle Forum Education & Legal Defense Fund, founded in 1981 by Phyllis Schlafly. *Amici* oppose unjustified mandates like the CMS Covid vaccine mandate, and have a strong interest in protecting access to medical care in rural America free of interference by federal vaccine mandates.

Amici respectfully move for leave to file the accompanying *amici curiae* brief in opposition to the application for a stay of the injunction.

Dated: January 3, 2022

Respectfully submitted,
ANDREW L. SCHLAFLY
939 OLD CHESTER ROAD
FAR HILLS, NJ 07931
(908) 719-8608
aschlafly@aol.com

Counsel for Amici Curiae

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INTERESTS OF *AMICI CURIAE*¹

Amici are the Doctors for Disaster Preparedness, a group of scientists (including physicians) founded in 1984, and Eagle Forum Education & Legal Defense Fund, founded in 1981 by Phyllis Schlafly.

Amici oppose unjustified mandates like the CMS Covid vaccine mandate, and have a strong interest in protecting access to medical care in rural America free of interference by federal vaccine mandates.

SUMMARY OF ARGUMENT

The Covid vaccine strategy is a colossal failure. Despite a year of vaccination in the United States, more than in many other nations, the United States has incurred by far the highest number of Covid cases in the world.² Second-place India, which has four times our population, has had only about 60% as many cases of Covid as the United States.³ In terms of deaths from Covid, the United States has the most in the world, seven times the mortality rate in India.⁴

But rather than be held accountable for their failed approach, agency officials insist on more of what has failed. Mandating more of a failure hardly makes

¹ The expedited schedule made 10-day advance notice and consent impractical, but the undersigned counsel provided notice to counsel for the parties prior to filing this. Pursuant to Rule 37.6, counsel for *amici curiae* authored this brief in whole, no counsel for a party authored this brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity – other than *Amici*, their counsel, and the members of *Amici* – contributed monetarily to the preparation or submission of this brief.

² <https://www.worldometers.info/coronavirus/> (viewed Jan. 2, 2022). Run by scientists and independent of any governmental control, Worldometers.info is widely recognized as the most credible source of data about Covid, as expressly cited by 16 federal and 5 state court published decisions.

³ *Id.*

⁴ *Id.*

“common sense,” as argued by the Biden Administration. (Biden Br. 20, 24, 28)

The federal government’s approach to Covid has always assumed, without evidence, that a vaccine approach would end or dramatically reduce the pandemic. Yet its vaccine strategy has never made any sense and is the result of circular reasoning by a few agency officials who insisted on imposing vaccines no matter what the evidence shows. The amicus brief submitted by the American Medical Association, *et al.*, illustrates the fallacious logic, by repeatedly assuming what the evidence does not support: “[t]he only way to truly end this pandemic is to ensure widespread vaccination.” (AMA Br. 13, quoting its own press release; *see also* AMA Br. 17 for a similar unsupported assertion).

Both the Public Health and AMA briefs prominently use the same phrase: “the science is clear.” (Public Health Br. 1; AMA Br. 15). The Public Health brief repeats its assertion of “clear” five times in its brief in reference to science, evidence, or a pandemic, even resorting once to the phrase “abundantly clear.” (Public Health Br. 1, 2, 18) While promoting mandatory vaccination, the government official Dr. Anthony Fauci declared that “I represent science,” and then insisted that his critics are somehow opposed to science. *CBS Face the Nation* (Nov. 28, 2021). But science does not fail as the Covid vaccines have, and it is not “settled science” to forcibly impose a controversial vaccine on knowledgeable health care workers who rationally decline.

ARGUMENT

Vaccines are not a successful approach to every pandemic, as the AIDS crisis demonstrated 35 years ago. Likewise, the so-called Spanish flu of 1918 was not overcome by a vaccine. Yet a handful of unaccountable federal agency workers adopted a pro-vaccine strategy back in early 2020 amid their own conflicts of interest, before any evidence was available, and have doubled-down on their approach ever since despite numerous indications that it is a failure.⁵

Notably missing from the many filings to this Court in support of the vaccine mandate is any discussion of the Vaccine Adverse Event Reporting System (VAERS), which is federally posted government data showing that “the total number of deaths associated with the COVID-19 vaccines *is more than double* the number of deaths *associated with all other vaccines combined* since the year 1990.”⁶ This is official data, and an admission by the same entity that seeks to force millions of Americans to receive these same Covid vaccines. These data show to date that the number of reported adverse reactions from these Covid vaccines is 983,758; the number of hospitalizations is 108,572; and the number of deaths is 20,622.⁷ British researchers analyzed the VAERS data and published a report in

⁵ See, e.g., Natalie Grover, *Covid-19 roundup: Hit with new conflict accusations, Janet Woodcock steps out of the agency’s Covid-19 chain of command*, ENDPOINT NEWS (May 20, 2020), <https://endpts.com/covid-19-roundup-hit-with-new-conflict-accusations-janet-woodcock-steps-out-of-the-agencys-covid-19-chain-of-command/> (viewed Jan. 2, 2022).

⁶ <https://vaersanalysis.info/2021/12/25/vaers-summary-for-covid-19-vaccines-through-12-17-2021/> (emphasis added, viewed Jan. 2, 2022).

⁷ *Id.*

June 2021 confirming the reliability of this data, “[c]ontrary to claims” of unreliability.⁸

Although the FDA itself has expressly relied on VAERS data,⁹ and 475 reported federal court decisions have expressly cited to VAERS, the federal government’s briefs to this Court fail to address it. Ignoring this harm by the vaccine does not make it go away. There is no meaningful analysis of the harms compared with purported benefits of the Covid vaccine, in the briefs filed in support of the mandate. VAERS reports are merely a fraction of overall injuries because many do not bother to file a report. The more than 20,000 deaths reported to VAERS after the Covid vaccine may be only a small fraction of the actual number.

The AMA’s brief details at length harm caused by Covid, but then concludes in a non sequitur that “[r]equiring healthcare facility staff to be vaccinated is therefore a crucial step toward protecting healthcare staff and patients from COVID-19.” (AMA Br. 10) While footnotes are throughout the AMA’s brief supporting statements that demonstrate how completely the governmental strategy has failed so far, there is insufficient support for the AMA’s assertions that mandatory vaccination will help. Indeed, already most health care providers are vaccinated, and yet Covid cases surge. Causing the unvaccinated workers to quit or

⁸ <https://www.researchgate.net/publication/352837543> Analysis of COVID-19 vaccine death reports from the Vaccine Adverse Events Reporting System VAERS Database Interim Results and Analysis (viewed Jan. 2, 2022).

⁹ FDA, Coronavirus (COVID-19) Update: July 13, 2021 (discussing concerns over VAERS reports of Guillain-Barre syndrome following vaccination) (available at <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-july-13-2021>).

be vaccinated can hardly be expected to make a dent in the worst-in-the-world Covid rates in the United States.

Other countries that have fared far better against Covid than the United States are doing so by making medications available over-the-counter for early treatment, such as hydroxychloroquine and ivermectin. Anyone can readily purchase ivermectin at local retail stores in the formerly communist Vietnam without a prescription or being retaliated against by the pro-vaccine public health authorities. Natural immunity and early treatment, rather than a misplaced hope in vaccination, is how countries less wealthy than the United States have overcome the Covid pandemic. Vietnam has only 333 Covid deaths per million in population, while the United States has eight times as many deaths per million: 2,538, as reported by the independent worldometers site.¹⁰

In *Jacobson v. Massachusetts*, the divided Court upheld a law by a state, not the federal government, which merely imposed a small fine on those who declined to be vaccinated. 197 U.S. 11 (1905). Since then this Court has vastly expanded individual liberties, while *Jacobson* became the basis for the inhumane utilitarian mandatory sterilization decision by the Supreme Court in *Buck v. Bell*, 274 U.S. 200, 207 (1927) (“The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough.”) (citing *Jacobson*).

¹⁰ <https://www.worldometers.info/coronavirus/> (viewed Jan. 2, 2022).

The entire American public cannot be compelled to be vaccinated, and many tens of millions of Americans will never submit voluntarily to a Covid vaccine. A partial vaccination approach that harshly penalizes a few million people by firing them for not being vaccinated is punitive and doomed to failure, as the past year has shown. The CDC admits that only about 62% of Americans have been fully vaccinated for Covid,¹¹ and adding a few million here or there will do nothing to curb the virus. It will, however, cause irreparable harm in other ways, such as reducing access to medical care in rural communities as thoroughly shown by Missouri's and Louisiana's briefs. (Missouri Br. 1, 6, 7; Louisiana Br. 17, 18, 29, 38)

CONCLUSION

For the foregoing reasons and those explained by the States, the application for a stay of the injunction against the CMS Covid vaccine mandate should be denied.

Respectfully submitted,

ANDREW L. SCHLAFLY
939 OLD CHESTER ROAD
FAR HILLS, NJ 07931
(908) 719-8608
aschlafly@aol.com

Counsel for Amici Curiae

Dated: January 3, 2022

¹¹ https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-total-admin-rate-total (viewed Jan. 2, 2022).