

No. 21-14269

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

STATE OF GEORGIA, *ET AL.*,

Plaintiffs-Appellees,

v.

PRESIDENT OF THE UNITED STATES, *ET AL.*,

Defendants-Appellants.

On Appeal from the U.S. District Court for the
Southern District of Georgia (1:21-cv-163-RSB-BKE)

**MOTION FOR LEAVE TO FILE BRIEF OF AMERICAN
MEDICAL ASSOCIATION, AMERICAN COLLEGE OF
PHYSICIANS, AMERICAN ACADEMY OF FAMILY
PHYSICIANS, AMERICAN ACADEMY OF PEDIATRICS,
AMERICAN ACADEMY OF ALLERGY, ASTHMA &
IMMUNOLOGY, AMERICAN COLLEGE OF CHEST
PHYSICIANS, AMERICAN COLLEGE OF MEDICAL GENETICS
AND GENOMICS, AMERICAN GERIATRICS SOCIETY,
AMERICAN MEDICAL WOMEN'S ASSOCIATION, AMERICAN
PSYCHIATRIC ASSOCIATION, AMERICAN SOCIETY FOR
CLINICAL PATHOLOGY, AMERICAN SOCIETY OF
HEMATOLOGY, AMERICAN THORACIC SOCIETY, SOCIETY
OF INTERVENTIONAL RADIOLOGY, AND AMERICAN LUNG
ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF
DEFENDANTS-APPELLANTS' MOTION FOR STAY
OF THE DISTRICT COURT'S DECEMBER 7, 2021
ORDER PENDING APPEAL**

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENTS**

Pursuant to Eleventh Circuit Rule 26.1-1, counsel for Proposed *Amici* certify that, to the best of their knowledge, the Certificate of Interested Persons filed by Defendants-Appellants in their motion for stay of the district court's December 7, 2021 order pending appeal, contains a correct complete list of the people and entities that have an interest in the outcome of this appeal.

The American Medical Association is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the AMA.

The American College of Physicians is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the ACP.

The American Academy of Family Physicians is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the AAFP.

The American Academy of Pediatrics is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the AAP.

The American Academy of Allergy, Asthma & Immunology is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the AAAAI.

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The American Thoracic Society is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the ATS.

The Society of Interventional Radiology is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of SIR.

The American Lung Association is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the ALA.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Pursuant to Federal Rule of Appellate Procedure 29, Proposed *Amici* move for leave to file the attached brief in support of Defendants-Appellants' motion for stay pending appeal.

Proposed *Amici* include 14 membership organizations of physicians and an organization representing patients:

The American Medical Association is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state.

The American College of Physicians is the largest medical specialty organization in the U.S. Its membership includes 161,000 internal medicine physicians, related subspecialists, and medical students. Internists apply scientific knowledge and clinical expertise to

the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness. ACP and its physician members lead the profession in education, standard-setting, and the sharing of knowledge to advance the science and practice of internal medicine.

Founded in 1947, the American Academy of Family Physicians is one of the largest national medical organizations, representing 133,500 family physicians and medical students nationwide. AAFP seeks to improve the health of patients, families, and communities by advocating for the health of the public and by supporting its members in providing continuous comprehensive health care to all.

The American Academy of Pediatrics was founded in 1930 and is a national, non-for-profit professional organization dedicated to furthering the interests of child and adolescent health. The AAP's membership includes over 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists. Over the past year-and-a-half, the AAP has devoted substantial resources to researching the scientific literature regarding how to treat COVID-19 and reduce its spread so that the AAP can provide up-to-date, evidence-based guidance for pediatricians and public health officials.

The American Academy of Allergy, Asthma & Immunology is the leading membership organization of more than 7,000 allergists/immunologists (in the United States, Canada and 72 other countries) and patients' trusted resource for allergies, asthma, and immune deficiency disorders. This membership includes allergists/immunologists and allied health and related healthcare professionals—all with a special interest in the research and treatment of allergic and immunologic diseases.

The American College of Chest Physicians, known as CHEST, is comprised of over 19,000 physicians, advance practice providers, respiratory therapists, and other front line health care professionals who provide patient care in pulmonary, critical care, and sleep medicine. CHEST serves as an important connection to clinical knowledge, research and resources, including through its highly respected peer-reviewed journal, clinical practice guidelines, and consensus statements. CHEST is interested in providing evidence-based guidance on respiratory disease-related public health issues and advocating for best practices in patient care.

The American College of Medical Genetics and Genomics is the only nationally recognized medical professional organization solely dedicated to improving health through the practice of medical genetics and genomics, and the only medical specialty society in the U.S. that represents the full spectrum of medical genetics disciplines in a single organization. The ACMG is dedicated to improving health through the clinical and laboratory practice of medical genetics and to guiding the safe and effective integration of genetics and genomics into all of medicine and healthcare, resulting in improved personal and public health.

The American Geriatrics Society is a nationwide, not-for-profit society of geriatrics healthcare professionals founded in 1942 and dedicated to improving the health, independence, and quality of life of older people. AGS's 6,000+ members include geriatricians, geriatrics nurse practitioners, social workers, family practitioners, physician assistants, pharmacists, and internists who are pioneers in advanced-illness care for older individuals, with a focus on championing interprofessional teams, eliciting personal care goals, and treating older people as whole persons. AGS advocates for policies and programs that

support the health, independence, and quality of life of all of us as we age. AGS has a strong interest in policies to prevent and mitigate COVID-19 infection as an important public health intervention for the health and safety of our nation—but most critically for our vulnerable populations.

The American Medical Women’s Association is the oldest multispecialty organization dedicated to advancing women in medicine and improving women’s health. With a mission to advance women in medicine, advocate for equity, and ensure excellence in health care, AMWA envisions a healthier world where women physicians achieve equity in the medical profession and realize their full potential and where patients receive unbiased care.

The American Psychiatric Association, with more than 37,400 members, is the nation’s leading organization of physicians who specialize in psychiatry. APA members engage in research into and education about diagnosis and treatment of mental health and substance use disorders, and are front-line physicians treating patients who experience mental health and/or substance use disorders. APA has participated in numerous cases in the Supreme Court and in the United States Courts of Appeals.

The American Society for Clinical Pathology is a 501(c)(3) non-profit medical specialty society representing more than 100,000 members. ASCP is one of the nation's largest medical specialty societies and the world's largest organization representing the field of laboratory medicine and pathology. ASCP membership is uniquely diverse, consisting broadly of board-certified pathologists, other physicians, clinical scientists, certified medical technologists and technicians, and educators. Together, ASCP's mission is to provide excellence in education, certification, and advocacy on behalf of patients, pathologists, and laboratory professionals to advance medicine and improve patient care. ASCP has on several occasions this year outlined its unwavering support for vaccine uptake and related mandates.¹

The American Society of Hematology is the world's largest professional society of hematologists, including approximately 18,000 clinicians and researchers, who are dedicated to furthering the

¹ See, e.g., *Statement Supporting OSHA's COVID Vaccine Requirement* (Nov. 17, 2021), <https://bit.ly/3dun6uS>; *To End the Pandemic, ASCP Urges that All Americans Be Vaccinated* (Aug. 11, 2021), <https://bit.ly/3IvV6VS>; *Joint Statement in Support of COVID-19 Vaccine Mandates for All Workers in Health and Long-Term Care* (July 29, 2021) <https://bit.ly/3IvV6VS>.

understanding, diagnosis, treatment, and prevention of disorders affecting the blood. ASH believes that vaccinations offer the best protection against contracting COVID-19, prevent severe illness and hospitalization, and will help save lives.

The American Thoracic Society is an international, nonprofit, nonpartisan organization with more than 15,000 physicians, scientists, nurses, and respiratory therapists dedicated to improving the health and wellbeing of patients suffering from critical care illness, pulmonary disease and sleep disordered breathing. ATS's members are on the front lines of the COVID-19 response, treating patients with COVID-19 in hospital ICUs, inpatient hospital wards and caring for patients with long-COVID. Given ATS's close and daily interaction with COVID-19 patients, ATS's members are also at significant risk for occupational exposures to COVID-19. As such the ATS has a compelling interest in seeing the federal government establish and enforce science-based vaccination and testing policy to protect the American public from further spread of COVID-19.

The Society of Interventional Radiology is a nonprofit, professional medical society representing more than 8,000 practicing interventional

radiology physicians, trainees, students, scientists, and clinical associates, dedicated to improving patient care through the limitless potential of image-guided therapies. SIR's members work in a variety of settings and at different professional levels—from medical students and residents to university faculty and private practice physicians.

The American Lung Association is the nation's oldest voluntary health organization committed to a world free of lung disease. SARS-COV-2 (COVID-19) is a respiratory disease that has a dramatic impact on people with lung diseases including lung cancer and chronic obstructive pulmonary disease. The American Lung Association strongly supports vaccinations and has created public education and information to increase access and overcome vaccine hesitancy. The Lung Association has also invested significant resources in research, education and public policy advocacy regarding the adverse health effects caused by COVID-19.

Although this Court does not appear to have published any opinions on the standard for considering a motion for leave to file an *amicus* brief, it is well-settled that whether to grant a motion for leave to participate as *amicus curiae* is “within the sound discretion of the courts.” *United*

States v. Michigan, 940 F.2d 143, 165 (6th Cir. 1991) (internal quotation marks omitted) (citing *N. Sec. Co. v. United States*, 191 U.S. 555 (1903)). Courts consider whether “the proffered information of amicus is timely, useful, or otherwise necessary to the administration of justice.” *Id.*; see also *Prairie Rivers Network v. Dynegy Midw. Generation, LLC*, 976 F.3d 761, 763 (7th Cir. 2020) (Scudder, J., in chambers) (“[T]he court looks at whether the submission will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not found in the briefs of the parties.” (internal quotation omitted)); *Neonatology Assocs., P.A. v. Comm’r of Internal Revenue*, 293 F.3d 128, 129 (3d Cir. 2002) (Alito, J.) (granting leave to file *amicus* brief where “amici have a sufficient ‘interest’ in the case and . . . their brief is ‘desirable’ and discusses matters that are ‘relevant to the disposition of the case’” (quoting Fed. R. App. P. 29(b))).

Proposed *Amici* have a strong interest in promoting public health and reducing the spread of COVID-19. The attached brief reflects Proposed *Amici*’s extensive review of medical literature supporting the efficacy and safety of the COVID-19 vaccines authorized or approved by the Food and Drug Administration. Accordingly, the proposed brief will

assist the Court because it sets forth medical and scientific information demonstrating that the Safer Federal Workforce Task Force's Guidance for Federal Contractors and Subcontractors is supported by substantial evidence; that the guidance was issued to curtail an occupational health emergency; and that enjoining enforcement of the safety protocols set forth in the guidance would cause grave, severe, and irreparable harm to the public interest. The brief therefore provides information that is "timely, useful, or otherwise necessary to the administration of justice." *Michigan*, 940 F.2d at 165.

Courts have repeatedly granted leave for one or more of the Proposed *Amici* to file briefs as *amici curiae* in cases related to federal vaccination policies.² This includes the district court below, which accepted an *amicus curiae* brief on behalf of the American Medical Association in this matter. *See* Dec. 2, 2021 Order, ECF No. 85.

² *See, e.g.*, Clerk Order, *Missouri v. Biden*, No. 21-3725 (8th Cir. Dec. 13, 2021) (granting motion of certain Proposed *Amici* and other medical groups to file *amicus* brief); Order, *In re MCP No. 165, OSHA Rule on COVID-19 Vaccine and Testing*, 86 *Fed. Reg.* 61402, No. 21-7000 (6th Cir. Dec. 3, 2021) (granting motion of American Medical Association to file *amicus curiae* brief); Order, *BST Holdings, L.L.C. v. OSHA*, No. 21-60845 (5th Cir. Nov. 11, 2021) (same); Instant Order, *Indiana v. OSHA*, Case No. 21-3066 (7th Cir. Nov. 18, 2021) (same).

Accordingly, the Court should grant Proposed *Amici* leave to file the attached brief as *amici curiae*.

Counsel for Proposed *Amici* have consulted with the parties' counsel, other than counsel for Kansas, who did not respond to efforts to consult with them by the time of this filing. Counsel for all other parties have either consented or have no objection to this motion.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Proposed *Amici* state that no counsel for any party authored the proposed brief in whole or in part, and no person or entity, other than Proposed *Amici* and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

Respectfully submitted,

/s/ Michael A. Caplan

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 29(a)(5) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 1,939 words according to the word count function of Microsoft Word 365.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Century Schoolbook font.

/s/ Michael A. Caplan

Date: December 14, 2021

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2021, a true and accurate copy of the foregoing motion was electronically filed with the Court using the CM/ECF system. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

/s/ Michael A. Caplan

Date: December 14, 2021

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Stanley Xu et al., *COVID-19 Vaccination and Non-COVID-19 Mortality Risk — Seven Integrated Health Care Organizations, United States, December 14, 2020–July 31, 2021*, 70 *Morbidity & Mortality Weekly Rep.* 1520 (2021), <https://bit.ly/3D1ZRn4>7

INTEREST OF *AMICI CURIAE*

As provided in the accompanying motion for leave to file, *Amici* are associations representing medical professionals and patients across disciplines. They accordingly have a strong interest in providing evidence-based guidance on public health issues and working to reduce the spread of contagious illnesses.¹

STATEMENT OF THE ISSUES

Whether this Court should stay the district court's preliminary injunction barring the President from enforcing vaccination requirements among federal contractors, given the public interest in promoting public health and ending the COVID-19 pandemic.

SUMMARY OF THE ARGUMENT

The United States is in an unprecedented and ongoing public health crisis. SARS-CoV-2, the causative agent of COVID-19, has wreaked havoc in communities across the country, taxed hospitals to the point of

¹ *Amici* certify that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund this brief, and no person other than *amici*, their members, and their counsel contributed money intended to fund this brief.

rationing care, upended the lives of countless families, and killed over 794,000 Americans.

Many COVID-19 outbreaks have occurred in workplaces, inducing an occupational health emergency. Workers—including federal contractor employees—who contract the SARS-CoV-2 virus, or worse, develop COVID-19 symptoms, disrupt workplace efficiency and must stay home during recovery. For nearly two years, *Amici* have monitored the COVID-19 pandemic and advocated for evidence-based public health measures to end it. *Amici*'s extensive review of the medical literature demonstrates that COVID-19 vaccines authorized or approved by the Food and Drug Administration are safe and effective, and their widespread use is the best way to keep COVID-19 from spreading within workplaces. Maintaining the injunction against the Safer Federal Workforce Task Force's Guidance for Federal Contractors and Subcontractors² would therefore severely and irreparably harm workers and undermine the public interest.

² See Safer Federal Workforce Task Force, *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors* (Nov. 10, 2021), <https://bit.ly/3Cd6vFG>; Federal Acquisition Regulatory Council, *Memorandum to Chief Acquisition Officers et al. re: Issuance of Agency*

ARGUMENT

I. COVID-19 poses a grave danger to the health of federal contractor employees.

COVID-19 presents a severe risk to public health. Although most people infected with COVID-19 will experience mild to moderate symptoms, infected individuals can become seriously ill or die at any age. As of December 14, 2021, there have been over forty-nine million confirmed cases of COVID-19 in the United States,³ leading to more than 3,471,000 hospitalizations⁴ and over 794,000 deaths—more than twenty-two times the number of people in the United States who die from influenza in the average year.⁵ Even those who recover from COVID-19 may experience debilitating symptoms lasting for several months after the acute phase of infection. A systematic review of forty-five studies including 9,751 participants found that 73% of infected individuals

Deviations to Implement Executive Order 14042 (Sept. 30, 2021), <https://bit.ly/3qAlUha>.

³ *COVID Data Tracker*, Centers for Disease Control and Prevention (Dec. 14, 2021), <https://bit.ly/3Du7Glz>.

⁴ *COVID Data Tracker Weekly Review*, CDC (Dec. 10, 2021), <https://bit.ly/3EYAdAb>.

⁵ *Disease Burden of Flu*, CDC (Oct. 4, 2021), <https://bit.ly/3ocAuZA>.

experienced at least one long-term symptom.⁶ Over half of previously hospitalized patients continue to experience cardiopulmonary symptoms and abnormalities six months later.⁷ Studies also indicate that COVID-19 is associated with increased risk of neurological and psychiatric outcomes.⁸

SARS-CoV-2 is highly transmissible. The original strain was more contagious than the flu, and the Delta variant of SARS-CoV-2, currently the leading strain, is more than twice as contagious as the original.⁹ Crucially, over 50% of the spread of the virus may be from individuals who have no symptoms at the time of transmission.¹⁰

⁶ Tahmina Nasserie et al., *Assessment of the Frequency and Variety of Persistent Symptoms: A Systematic Review*, JAMA Network Open, May 26, 2021, <https://bit.ly/3qocFkk>.

⁷ M.P. Cassar et al., *Symptom Persistence Despite Improvement in Cardiopulmonary Health – Insights from longitudinal CMR, CPET and lung function testing post-COVID-19*, EClinicalMedicine (2021), <https://bit.ly/3H7AeDB>.

⁸ Maxime Taquet, et al., *6-month neurological and psychiatric outcomes in 236379 survivors of COVID-19: a retrospective cohort study using electronic health records*, The Lancet Psychiatry, (Apr. 6, 2021), <https://bit.ly/3DXTbGo>.

⁹ *Delta Variant: What We Know About the Science*, CDC (Aug. 26, 2021), <https://bit.ly/3plAmcy>; Apoorva Mandavilli, *C.D.C. Internal Report Calls Delta Variant as Contagious as Chickenpox*, N.Y. Times (Jul. 30, 2021), <https://nyti.ms/3EtJXTb>.

¹⁰ *Use of Cloth Masks to Control the Spread of SARS-CoV-2*, CDC (May 7, 2021), <https://bit.ly/30inWYx>.

Workplace transmission has been a major factor in the spread of COVID-19. COVID-19 outbreaks have occurred among workers—including federal contractor employees—in numerous industries, including service and sales, education, hospitality, construction, domestic work, meat-processing, transportation, prison, and of course healthcare industries.¹¹ Studies found widespread COVID-19 outbreaks in meat- and poultry-processing facilities and “identified high proportions of asymptomatic or presymptomatic infections.”¹²

Forty-five percent more people reported missing work for medical reasons during 2020 than the previous twenty-year average.¹³ Another study found that adults who tested positive for SARS-CoV-2 were significantly more likely to report going to an office or school setting than

¹¹ *Update 64—COVID-19 Prevention at the Workplace*, World Health Organization (Jul. 28, 2021), <https://bit.ly/307J1V6>; *Investigating and Responding to COVID-19 Cases in Non-Healthcare Work Settings*, CDC (Oct. 25, 2021), <https://bit.ly/3qC74XN>.

¹² Michelle A. Waltenburg et al., *Coronavirus Disease among Workers in Food Processing, Food Manufacturing, and Agriculture Workplaces*, 27 *Emerging Infectious Diseases* 243 (2021), <https://bit.ly/3kp3Lip>.

¹³ Charisse Jones & Matt Wynn, *Coronavirus and the Workplace: The Virus Causes Record Numbers of Job Absences in 2020*, USA Today (Jan. 21, 2021), <https://bit.ly/3C39lgx>.

adults who tested negative.¹⁴ Protecting workers from COVID-19 is especially important given that “a large proportion of the United States workforce, across a variety of occupational sectors, are exposed to disease or infection at work more than once a month.”¹⁵ Requiring federal contractor employees to be vaccinated is not just an efficiency-promoting practice; it is life-saving.

II. Vaccines provide a safe and effective way to help reduce transmission of COVID-19 in the workplace.

COVID-19 vaccines are safe. Before FDA authorized/approved and CDC recommended use of the COVID-19 vaccines, scientists conducted clinical trials. FDA, CDC, and their advisory committees conducted rigorous reviews of the data, and continue to monitor the vaccines’ safety.¹⁶ A study of over six million people who received the Pfizer or

¹⁴ Kiva A. Fisher et al., *Telework Before Illness Onset Among Symptomatic Adults Aged ≥ 18 Years With and Without COVID-19 in 11 Outpatient Health Care Facilities — United States, July 2020*, 69 *Morbidity & Mortality Weekly Rep.* 1648 (Apr. 28, 2020), <https://bit.ly/3F5Ybt8>.

¹⁵ Marissa G. Baker et al., *Estimating the burden of United States workers exposed to infection or disease: A key factor in containing risk of COVID-19 infection*, *PLoS ONE* (2020), <https://bit.ly/3BWD0q8>.

¹⁶ *Benefits of Getting a COVID-19 Vaccine*, CDC (last updated Nov. 29, 2021), <https://bit.ly/3H6BsiF>; Nicola P. Klein et al., *Surveillance for Adverse Events After COVID-19 mRNA Vaccination*, 326 *JAMA* 1390,

Moderna vaccines found that serious side effects are very rare.¹⁷ Another study concluded that there is no increased risk for mortality among recipients of any of the COVID-19 vaccines, and that vaccine recipients in fact had lower non-COVID-19 mortality risks than did unvaccinated people.¹⁸

COVID-19 vaccines are also effective. First, each of the three vaccines greatly reduces the likelihood of contracting infection. The Pfizer, Moderna, and J&J/Janssen vaccines are 91.3%, 90%, and 72% effective against infection, respectively.¹⁹ Although the vaccines' efficacy wanes over time, initial data on Pfizer booster shots show that they may boost the vaccine efficacy to over 95%.²⁰

(2021), <https://bit.ly/3F1XQYM>; *COVID-19 vaccine safety surveillance*, FDA (Jul. 12, 2021), <https://bit.ly/3y1dDET>.

¹⁷ Klein et al., *supra* n. 16.

¹⁸ Stanley Xu et al., *COVID-19 Vaccination and Non-COVID-19 Mortality Risk — Seven Integrated Health Care Organizations, United States, December 14, 2020–July 31, 2021*, 70 *Morbidity & Mortality Weekly Rep.* 1520 (2021), <https://bit.ly/3D1ZRn4>.

¹⁹ Kathy Katella, *Comparing the COVID-19 Vaccines: How Are They Different?*, Yale Med. (Nov. 19, 2021), <https://bit.ly/307jEU5>.

²⁰ *Pfizer and BioNTech Announce Phase 3 Trial Data Showing High Efficacy of a Booster Dose of Their COVID-19 Vaccine*, Pfizer (Oct. 21, 2021), <https://bit.ly/3EXQa9K>.

Second, the vaccines are even more effective against serious illness and death. Studies have estimated the Pfizer, Moderna, and J&J/Janssen vaccines as 95.3–97%, 95%, and 86% effective against severe disease, respectively.²¹ The vaccines are likewise highly effective against hospital admissions, “even in the face of widespread dissemination of the delta variant.”²² According to one analysis, between March 11 and August 15, 2021, unvaccinated people accounted for 84.2% of patients hospitalized for COVID-19, including those infected with the Delta variant.²³ As of October 30, 2021, the age-adjusted rate of COVID-19 associated hospitalizations in unvaccinated adults was more than 12 times that of fully vaccinated adults.²⁴

The initial rollout of COVID-19 vaccines in the United States “was associated with reductions in COVID-19 cases, emergency department

²¹ Katella, *supra* n. 19.

²² Sara Y. Tartof et al., *Effectiveness of mRNA BNT162b2 COVID-19 Vaccine Up to 6 Months*, 398 *Lancet* 1407, 1407 (2021), <https://bit.ly/3ouPvqS>.

²³ Mark W. Tenforde, *Association Between mRNA Vaccination and COVID-19 Hospitalization and Disease Severity*, 326 *JAMA* 2043 (2021), <https://bit.ly/3bZBHhb>.

²⁴ See *Rates of laboratory-confirmed COVID-19 hospitalizations by vaccination status*, CDC (last updated Dec. 2, 2021), <https://bit.ly/3oIwsZ4>.

visits, and hospital admissions among older adults.”²⁵ In August 2021, unvaccinated people had a 6.1 times greater risk of testing positive for COVID-19, and an 11.3 times greater risk of dying from COVID-19, than fully vaccinated people.²⁶

Third, evidence suggests that those who are fully vaccinated are contagious for shorter periods than unvaccinated people.²⁷ Most importantly, “[r]egardless of viral loads in vaccinated and unvaccinated individuals, the fact remains clear that unvaccinated people pose a higher risk of transmission to others than vaccinated people, simply because they are much more likely to get COVID-19 in the first place.”²⁸

III. The more federal contractor employees who get vaccinated, the safer the workplace becomes.

The more federal contractor employees who get vaccinated, the closer we are to slowing the spread of the virus, creating a safer

²⁵ Lucy A. McNamara et al., *Estimating the Early Impact of the US COVID-19 Vaccination Programme on COVID-19 Cases, Emergency Department Visits, Hospital Admissions, and Deaths Among Adults Aged 65 Years and Older: An Ecological Analysis of National Surveillance Data*, *Lancet* (Nov. 3, 2021), <https://bit.ly/31NqTRq>.

²⁶ *Rates of COVID-19 Cases and Deaths by Vaccination Status*, CDC (last visited Dec. 13, 2021), <https://bit.ly/3F3YMLV>.

²⁷ See COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61,402, 61,419 (Nov. 5, 2021).

²⁸ *Id.*

environment, and preventing employee illness due to COVID-19. As the American Medical Association has explained, “[t]he only way to truly end this pandemic is to ensure *widespread* vaccination.”²⁹ Widespread vaccination is the only practical way to push the effective reproduction rate of the SARS-CoV-2 virus below one, the rate at which endemic transmission begins to die out.

Widespread vaccination reduces the likelihood of infections among both vaccinated and unvaccinated people. “[S]tates with high vaccination rates (>70% of the population) are reporting lower numbers of vaccine breakthrough cases as well as hospitalizations and deaths from COVID-19.”³⁰ This is particularly important for people who cannot get vaccinated due to age or medical condition, as well as immunocompromised people, who remain particularly susceptible to infection even after vaccination.³¹

²⁹ Press Release, Am. Med. Ass’n, *AMA, AHA, ANA urge vaccinations as U.S. reaches 750,000 COVID-19 deaths* (Nov. 4, 2021) (emphasis added), <https://bit.ly/3C07CIS>.

³⁰ Carlos del Rio et al., *Confronting the Delta Variant of SARS-CoV-2, Summer 2021*, 326 *JAMA* 1001, 1002 (2021), <https://bit.ly/3bVL5Cj>.

³¹ Katherine Lontok, *How Effective Are COVID-19 Vaccines in Immunocompromised People?*, Am. Soc’y for Microbiology (Aug. 12, 2021), <https://bit.ly/3F24HBh>.

History has shown that vaccine requirements are critical to achieving the degree of vaccination necessary to curb or eradicate infectious disease. Countries or states that mandated smallpox vaccination saw 10 to 30 times fewer smallpox cases than those that declined to do so.³² Before compulsory school vaccination laws were in place throughout the United States, states with strict vaccination requirements had incidence rates of measles less than half those of states that did not.³³ More recently, in a report by the CDC of measles occurrences in the United States between January 4 through April 2, 2015, a total of 159 cases were reported, including in Georgia.³⁴ “Over 80% of the cases occurred among persons who were unvaccinated or had unknown vaccination status.”³⁵ The report went on to conclude that the “continued risk for importation of measles into the United States and

³² Rajaie Batniji, *Historical Evidence to Inform COVID-19 Vaccine Mandates*, 397 *Lancet* 791 (2021), <https://bit.ly/3pW3HbR> (citing Frank Fenner, et al., World Health Org., *Smallpox and Its Eradication* (1988)).

³³ Kevin M. Malone & Alan R. Hinman, *Vaccination Mandates: The Public Health Imperative and Individual Rights*, in *Law in Public Health Practice* 262 (1st ed., 2003), <https://bit.ly/3BUviyg>.

³⁴ Nakia S. Clemmons, et al., *Measles — United States, January 4–April 2, 2015*, *Morbidity and Mortality Weekly Rep.*, Vol. 64 Issue 14: 373–376 (Apr. 17, 2015), <https://bit.ly/3l3bkvK>.

³⁵ *Id.*

occurrence of measles cases and outbreaks in communities with high proportions of unvaccinated persons *highlight the need for sustained, high vaccination coverage across the country.*³⁶ Similarly, the more federal contractor employees who are vaccinated, the better protected all employees—vaccinated and unvaccinated alike—will be.³⁷

IV. Widespread vaccination is the most effective way to protect federal contractor employees from COVID-19.

The statistics on COVID-19 vaccine efficacy speak for themselves. No other measure has been shown to reduce the risk of infection, hospitalization, and death to the degree that vaccination does. The science is clear: no arguments against the need for vaccination are medically valid, other than to accommodate a medical contraindication.

Natural immunity—the immunity against SARS-CoV-2 that develops following recovery from infection—is not an adequate substitute for vaccination.³⁸ Infection carries a significant risk of death or serious

³⁶ *Id.* (emphasis added).

³⁷ *See, e.g., Florida v. HHS*, Case No. 21-14098, 2021 WL 5768796, at *17 (11th Cir. Dec. 6, 2021) (“Imposing an injunction to bar enforcement of the interim rule would harm the public interest in slowing the spread of COVID-19 . . .”).

³⁸ *See* Catherine H. Bozio et al., *Laboratory-Confirmed COVID-19 Among Adults Hospitalized with COVID-19-Like Illness with Infection-Induced or mRNA Vaccine-Induced SARS-CoV-2 Immunity – Nine States*,

illness; vaccination does not. Moreover, vaccination better protects previously infected people against reinfection. Studies have shown that unvaccinated people are at least twice as likely to become reinfected as are vaccinated people.³⁹ There is no evidence that vaccination is harmful to people who were previously infected.

Other mitigation measures, such as mask wearing and social distancing, remain important. They do not, however, provide the same level of protection against COVID-19 as does vaccination. Although face masks can be highly effective at limiting the transmission of SARS-CoV-2, many people choose not to wear face masks, even when encouraged or legally required to do so. Noncontinuous mask-wearing has been shown to result in the spread of COVID-19 in the workplace.⁴⁰

January–September 2021, 70 *Morbidity & Mortality Weekly Rep.* 1539 (2021), <https://bit.ly/3kvoBwR> (finding 5.5 times higher odds of laboratory-confirmed COVID-19 among previously infected patients than among fully vaccinated patients).

³⁹ Alyson M. Cavanaugh et al., *Reduced Risk of Reinfection with SARS-CoV-2 After COVID-19 Vaccination — Kentucky, May–June 2021*, 70 *Morbidity & Mortality Weekly Rep.* 1081 (2021), <https://bit.ly/306e4Bg>.

⁴⁰ Donatella Sarti et al., *COVID-19 in Workplaces: Secondary Transmission*, 65 *Annals Work Exposures & Health* 1145 (2021), <https://bit.ly/3Cj6oJ3>.

Immediate, widespread vaccination against COVID-19 promotes workplace efficiency and reduces worker absenteeism. It is the surest way to protect federal contractor employees and the public and to end this costly pandemic.

CONCLUSION

For the reasons stated above and in Defendants-Appellants' filings, *Amici* urge this Court to grant Defendants-Appellants' motion for stay pending appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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/s/ Michael A. Caplan

Date: December 14, 2021

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2021, a true and accurate copy of the foregoing motion was electronically filed with the Court using the CM/ECF system. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

/s/ Michael A. Caplan

Date: December 14, 2021