

In the Supreme Court of the United States

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

Applicants,

v.

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 PENDING APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND FURTHER PROCEEDINGS IN THIS COURT

MOTION FOR LEAVE TO FILE AND BRIEF OF AMERICAN MEDICAL ASSOCIATION, AMERICAN COLLEGE OF PHYSICIANS, AMERICAN ACADEMY OF FAMILY PHYSICIANS, AMERICAN ACADEMY OF PEDIATRICS, COUNCIL OF MEDICAL SPECIALTY SOCIETIES, AMERICAN ACADEMY OF ALLERGY, ASTHMA & IMMUNOLOGY, AMERICAN COLLEGE OF CHEST PHYSICIANS, AMERICAN COLLEGE OF MEDICAL GENETICS AND GENOMICS, AMERICAN GERIATRICS SOCIETY, AMERICAN PSYCHIATRIC ASSOCIATION, AMERICAN SOCIETY FOR CLINICAL PATHOLOGY, AMERICAN SOCIETY OF HEMATOLOGY, AMERICAN THORACIC SOCIETY, SOCIETY OF GENERAL INTERNAL MEDICINE, SOCIETY OF INTERVENTIONAL RADIOLOGY, AND AMERICAN LUNG ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF APPLICANTS' APPLICATION FOR A STAY OF THE INJUNCTION PENDING APPEAL

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The American Medical Association, American College of Physicians, American Academy of Family Physicians, American Academy of Pediatrics, Council of Specialty Medical Societies, American Academy of Allergy, Asthma & Immunology, American College of Chest Physicians, American College of Medical Genetics and Genomics, American Geriatrics Society, American Psychiatric Association, American Society for Clinical Pathology, American Society of Hematology, American Thoracic Society, Society of General Internal Medicine, Society of Interventional Radiology, and American Lung Association respectfully move for leave to file the enclosed brief as *amici curiae* in support of Applicants' application for a stay of the injunction issued by the United States District Court for the Eastern District of Missouri pending appeal, including leave to file without ten days' notice to the parties, as ordinarily required by this Court's Rule 37.2(a), and leave to file in 8½- by 11-inch format.

Amici include fifteen national medical societies and an organization representing patients and the public health. *Amici* have a strong interest in promoting public health and reducing the spread of COVID-19, particularly within their own workplaces. The attached brief reflects *Amici's* extensive review of medical literature supporting the efficacy and safety of COVID-19 vaccines authorized or approved by the U.S. Food and Drug Administration. Accordingly, the proposed brief will assist the Court because it sets forth medical and scientific information demonstrating that the vaccination rule promulgated by the Centers for Medicare & Medicaid Services is neither arbitrary nor capricious and that maintaining the stay of that standard would cause severe and irreparable harm to the public interest.

Courts have repeatedly granted leave for one or more of *Amici* to file briefs as *amici curiae* in cases related to federal vaccination policies. This includes the Court of Appeals below, which accepted an *amicus curiae* brief on behalf of a number of *Amici* in this matter. *See* App. 1a; *see also, e.g.,* Order, *In re MCP No. 165, OSHA Rule on COVID-19 Vaccination and Testing*, 86 *Fed. Reg.* 61402, No. 21-7000 (6th Cir. Dec. 3, 2021), Dkt. No. 299 (granting motion of American Medical Association to file *amicus curiae* brief); Instant Order, *Indiana v. OSHA*, No. 21-3066 (7th Cir. Nov. 18, 2021), Dkt. No. 22, (same); Court Order, *BST Holdings v. OSHA*, No. 21-60845 (5th Cir. Nov. 11, 2021) (same).

Counsel for *Amici* have consulted with the parties' counsel. In light of the briefing schedule, it was not feasible to give the parties ten days' notice of filing of this brief, but counsel for *Amici* informed counsel for all parties of their intent to file within hours of the filing of the application at issue. Applicants take no position on this motion. Counsel for Respondents have consented to the timely filing of an *amicus* brief.

To the extent that leave is required, *Amici* respectfully move for leave to file the attached brief on 8½- by 11-inch paper rather than in booklet form, given the expedited nature of the briefing. Should the Clerk's Office, the Circuit Justice, or the Court so require, *Amici* commit to re-filing expeditiously in booklet format. *See* S. Ct. Rule 21.2(c).

For the foregoing reasons, *Amici* respectfully move for leave to file the attached *amicus curiae* brief in support of Applicants' application for a stay of the injunction pending appeal.

Dated: December 21, 2021

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*

Amici are associations representing medical professionals and patients and the public health across disciplines. They accordingly have a strong interest in both patient care and the applicability of the Centers for Medicare & Medicaid Services' rule to their members' workplaces.¹

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.

¹ This brief is filed with the written consent of Respondents; Applicants took no position on this filing of this brief. Pursuant to Sup. Ct. R. 37.6, counsel for *Amici* authored this brief in whole; no party's counsel authored, in whole or in part, this brief; and no person or entity other than *Amici* and their counsel contributed monetarily to preparing or submitting this brief.

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, not-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 Council of Medical Specialty Societies is a coalition of forty-seven specialty societies representing more than 800,000 physicians across the house of medicine. CMSS provides a proactive platform to address emerging issues across specialty societies that influence the future of healthcare and the patients it serves. CMSS supports and strengthens member specialty societies to address future challenges through convening, collective voice, and action across specialties.

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 seventy-two other countries) and patients' trusted resource for

allergies, asthma, and immune deficiency disorders. This membership includes allergist/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 more than 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 more than 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 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 this 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. *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>.

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 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 intensive care units and inpatient hospital wards, and caring

for patients with long-COVID-19. 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 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 General Internal Medicine represents more than 3,000 of the nation's leading academic general internists, who are dedicated to the mission of cultivating innovative educators, researchers, and clinicians in general internal medicine, leading the way to better health for everyone. The Society's members advance the practice of medicine through their commitment to providing comprehensive, coordinated, and cost-effective care to adults, educating the next generation of outstanding physicians, and conducting cutting-edge research to improve quality of care and clinical outcomes of all patients.

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.

INTRODUCTION AND SUMMARY OF ARGUMENT

The United States is in an unprecedented and ongoing public health crisis as it battles COVID-19—a battle that can be won only with widespread vaccination. While vaccination of all workers is critical to protecting public health and safety, it is even more urgent that healthcare workers be vaccinated: the potential for transmission of the SARS-CoV-2 virus in healthcare settings puts not only frontline workers, but also patients, at risk. *Amici*'s extensive review of the medical literature demonstrates that COVID-19 vaccines authorized or approved by the U.S. Food and Drug Administration are safe and effective, and the widespread use of those vaccines is the best way to keep COVID-19 from spreading within healthcare facilities. Maintaining the injunction against the Centers for Medicare & Medicaid Services' interim final rule requiring vaccination of covered healthcare facility staff² would therefore severely and irreparably harm patients and undermine the public interest.

² Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555 (Nov. 5, 2021).

ARGUMENT

I. COVID-19 Poses A Grave Danger To The Health Of Healthcare Facility Staff And Patients.

COVID-19 presents a severe risk to public health. Although most people infected with the virus will experience mild to moderate symptoms, individuals with COVID-19 can become seriously ill or die at any age. As of December 21, 2021, there have been more than fifty million confirmed cases of COVID-19 in the United States,³ leading to more than 3,529,000 hospitalizations⁴ and more than 803,000 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 or more after the acute phase of infection. A systematic review of forty-five studies found that 73% of infected individuals experienced at least one long-term symptom.⁶ Studies also indicate that COVID-19 is associated with increased risk of adverse neurological and psychiatric outcomes.⁷

SARS-CoV-2 is highly transmissible. The original strain was more contagious than the flu, and the Delta variant of SARS-CoV-2, the leading strain until recent

³ *COVID Data Tracker*, CDC, <https://bit.ly/3Du7Glz> (last visited Dec. 21, 2021).

⁴ *COVID Data Tracker Weekly Review*, CDC (Dec. 17, 2021), <https://bit.ly/3EYAdAb>.

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

⁶ Tahmina Nasserie et al., *Assessment of the Frequency and Variety of Persistent Symptoms Among Patients With COVID-19: A Systematic Review*, JAMA Network Open (May 26, 2021), <https://bit.ly/3qocFkk>.

⁷ 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>.

days, is more than twice as contagious as previous variants.⁸ The surging Omicron variant—which now accounts for 73% of new cases in the United States—appears to be more contagious still.⁹ Crucially, more than 50% of the spread of the virus may be from individuals who have no symptoms at the time of transmission.¹⁰

Transmission in healthcare facilities has been a major factor in the spread of COVID-19. Since the beginning of the COVID-19 outbreak in February 2020, COVID-19 has ravaged nursing homes, long-term care facilities, and hospitals.¹¹ A study found that “[u]p to 1 in 6 SARS-CoV-2 infections among hospitalised patients with COVID-19 in England during the first 6 months of the pandemic could be attributed to [healthcare-associated] transmission.”¹² Another study found that frontline healthcare workers had a threefold risk of contracting SARS-CoV-2 compared to the general population.¹³ And healthcare facilities are still loci of outbreaks of the Delta variant. Outbreaks in Iowa nursing homes during October 2021, for example, caused

⁸ *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 (July 30, 2021), <https://nyti.ms/3EtJXTb>.

⁹ *Omicron Variant: What You Need to Know*, CDC (updated Dec. 19, 2021), <https://bit.ly/327xwyr>; *COVID Data Tracker: Variant Proportions*, CDC (last visited Dec. 20, 2021), <https://bit.ly/3snnhk7>.

¹⁰ *Science Brief: Community Use of Masks to Control the Spread of SARS-CoV-2*, CDC (updated Dec. 6, 2021), <https://bit.ly/30inWYx>.

¹¹ See, e.g., Karen Shen et al., *Estimates of COVID-19 Cases and Deaths Among Nursing Home Residents Not Reported in Federal Data*, at 2, JAMA Network Open (Sept. 9, 2021), <https://bit.ly/3lG02h2> (“[N]ursing homes have been centers for outbreaks and excess mortality from the COVID-19 pandemic . . .”); Aaron Richterman et al., *Hospital-Acquired SARS-CoV-2 Infection: Lessons for Public Health*, 324 JAMA 2155 (Nov. 13, 2020), <https://bit.ly/3Irc8Va>; see also, e.g., Temet M. Michael et al., *Epidemiology of Covid-19 in a Long-Term Care Facility in King County, Washington*, 382 New Eng. J. Med. 2005 (May 21, 2020), <https://bit.ly/3pBvoXy>.

¹² Alex Bhattacharya et al., *Healthcare-associated COVID-19 in England: a national data linkage study*, 83 J. Infection 565, 565 (Aug. 30, 2021), <https://bit.ly/31xXHO9>.

¹³ Long H. Nguyen et al., *Risk of COVID-19 among front-line health-care workers and the general community: a prospective cohort study*, 5 Lancet e475, e476 (July 31, 2020), <https://bit.ly/31ABwY2>.

at least 370 residents and staff to become infected.¹⁴ Requiring healthcare facility staff to be vaccinated is therefore a crucial step toward protecting healthcare staff and patients from COVID-19.

II. Vaccines Provide A Safe And Effective Way To Help Reduce Transmission Of COVID-19 In Healthcare Facilities.

COVID-19 vaccines are safe. Before FDA authorized/approved and the Centers for Disease Control and Prevention recommended use of the COVID-19 vaccines in the population, scientists conducted extensive clinical trials. FDA, CDC, and their advisory committees conducted rigorous reviews of the data, and continue to monitor the vaccines' safety.¹⁵ A study of more than six million people who received the Pfizer or Moderna vaccines found that serious side effects are very rare.¹⁶ 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.¹⁷

COVID-19 vaccines are also effective. First, each of the three vaccines greatly reduces the likelihood of contracting SARS-CoV-2. The Pfizer, Moderna, and

¹⁴ Clark Kauffman, *Iowa's nursing home infections and outbreaks are up 20% over last week*, Iowa Cap. Dispatch (Oct. 29, 2021), <https://bit.ly/3oIpMu0>.

¹⁵ *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 (Sept. 3, 2021), <https://bit.ly/3F1XQYM>; *COVID-19 vaccine safety surveillance*, FDA (Dec. 7, 2021), <https://bit.ly/3y1dDET>.

¹⁶ Klein et al., *supra* note 15.

¹⁷ 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 (Oct. 29, 2021), <https://bit.ly/3D1ZRn4>. Although the CDC recently recommended the Pfizer or Moderna vaccines over the J&J/Janssen vaccine, the CDC's advisory committee made clear that "receiving any vaccine is better than being unvaccinated." Press Release, CDC, *CDC Endorses ACIP's Updated COVID-19 Vaccine Recommendations* (Dec. 16, 2021), <https://bit.ly/3yzUTfJ>.

J&J/Janssen vaccines are 91.3%, 90%, and 72% effective against infection, respectively.¹⁸ A study of vaccine effectiveness between December 14, 2020 and August 14, 2021 found that vaccines were 80% effective at preventing SARS-CoV-2 infection among frontline workers.¹⁹ Although the vaccines' efficacy wanes over time, initial data on Pfizer booster shots, during a time when Delta was the prevalent variant, show that they may boost the vaccine efficacy to more than 95%.²⁰ For comparison, the flu vaccination reduces the risk of flu illness by between 40% and 60%.²¹

Second, each of the three vaccines is 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.²² The vaccines are likewise highly effective against hospital admissions, “even in the face of widespread dissemination of the delta variant.”²³ According to one analysis, between March 11 and August 15, 2021, unvaccinated people accounted for 84.2% of

¹⁸ Kathy Katella, *Comparing the COVID-19 Vaccines: How Are They Different?*, Yale Med. (Dec. 16, 2021), <https://bit.ly/307jEU5>.

¹⁹ Ashley Fowlkes et al., *Effectiveness of COVID-19 Vaccines in Preventing SARS-CoV-2 Infection Among Frontline Workers Before and During B.1.617.2 (Delta) Variant Predominance — Eight U.S. Locations, December 2020–August 2021*, 70 *Morbidity & Mortality Weekly Rep.* 1167 (Aug. 24, 2021), <https://bit.ly/3px2OGB>.

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>. A study comparing people in Israel 60 years old and older who have and have not received third-dose boosters also provides support for the increased efficacy of booster shots. See Yinon M. Bar-On et al., *Protection of BNT162b2 Vaccine Booster against Covid-19 in Israel*, 385 *New Eng. J. Med.* 1393 (Oct. 7, 2021), <https://bit.ly/327ijh2>.

²¹ *Vaccine Effectiveness: How Well Do Flu Vaccines Work?*, CDC (last visited Dec. 16, 2021), <https://bit.ly/3HifLMP>.

²² Katella, *supra* note 18.

²³ Sara Y. Tartof et al., *Effectiveness of mRNA BNT162b2 COVID-19 Vaccine Up to 6 Months*, 398 *Lancet* 1407, 1407 (Oct. 4, 2021), <https://bit.ly/3ouPvqS>.

patients hospitalized for COVID-19, including those infected with the Delta variant.²⁴ 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.²⁵ Although research regarding vaccine efficacy against the Omicron variant is still developing, initial reports suggest that vaccination, including a booster, remains efficacious against severe disease.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 Healthcare Facility Staff Who Get Vaccinated, The Safer Healthcare Facilities Become.

The more healthcare facility staff who get vaccinated, the closer we are to slowing the spread of the virus, creating a safer environment, and preventing staff and patient illness due to COVID-19. As the American Medical Association has explained,

²⁴ Mark W. Tenforde, *Association Between mRNA Vaccination and COVID-19 Hospitalization and Disease Severity*, 326 JAMA 2043 (Nov. 4, 2021), <https://bit.ly/3bZBHhb>.

²⁵ See *Rates of laboratory-confirmed COVID-19 hospitalizations by vaccination status*, CDC (last updated Dec. 2, 2021), <https://bit.ly/3oIwsZ4>.

²⁶ See Carl Zimmer & Sheryl Stolberg, *New Studies Raise Hopes That Vaccines Prevent Severe Disease From Omicron*, N.Y. Times (Dec. 15, 2021), <https://nyti.ms/3H3uCd4>.

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

²⁸ *Id.*

“[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. During the wave of Delta infections, “states 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 An analysis found that “[i]n the presence of high community prevalence of Covid-19, nursing homes with low staff vaccination coverage had higher numbers of cases and deaths than those with high staff vaccination coverage.”³¹ Widespread vaccination 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 vaccination³²—and who may be particularly likely to encounter workers in healthcare facilities, where social distancing is not an option. Widespread vaccination is likewise critical to ensuring that patients feel sufficiently safe in healthcare settings to seek treatment in the first place.³³

²⁹ Press Release, American Medical 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 (Aug. 18, 2021), <https://bit.ly/3bVL5Cj>.

³¹ Brian E. McGarry et al., *Nursing Home Staff Vaccination and Covid-19 Outcomes*, *New Eng. J. Med.*, Correspondence (Dec. 8, 2021), <https://bit.ly/3pQ7O9H>.

³² Katherine Lontok, *How Effective Are COVID-19 Vaccines in Immunocompromised People?*, *Am. Soc’y for Microbiology* (Aug. 12, 2021), <https://bit.ly/3F24HBh>.

³³ See Mark E. Czeisler et al., *Delay or Avoidance of Medical Care Because of COVID-19-Related Concerns — United States, June 2020*, 69 *Morbidity & Mortality Weekly Rep.* 1250 (Sept. 11, 2020),

Widespread vaccination also protects against overwhelming healthcare systems with COVID-19 patients. “COVID-19 surges [a]re associated with higher rates of in-hospital mortality among patients *without* COVID-19, suggesting disruptions in care patterns for patients with many common acute and chronic illnesses.”³⁴ For example, during the pandemic, an antiques dealer in Alabama died from a cardiac event after dozens of intensive care units in three states turned him down for lack of space.³⁵ In Idaho, where hospitals across the state were authorized to ration care, one hospital canceled elective procedures and postponed necessary procedures, including excising brain tumors.³⁶ Widespread vaccination will result in fewer severe cases requiring medical intervention and fewer infections among healthcare workers, freeing up crucial resources to provide quality care to patients facing non-COVID-19-related illnesses. Low vaccination rates, not vaccination requirements, pose the real threat of overwhelming the healthcare system.³⁷

<https://bit.ly/3oYjdVx> (“By June 30, 2020, because of concerns about COVID-19, an estimated 41% of U.S. adults had delayed or avoided medical care . . .”).

³⁴ See Amber K. Sabbatini et al., *Excess Mortality Among Patients Hospitalized During the COVID-19 Pandemic*, 16 J. Hosp. Med. 596, 596 (July 21, 2021), <https://bit.ly/3Hs5EEU> (emphasis added).

³⁵ Tim Stelloh, *Alabama heart patient dies after hospital contacts 43 ICUs in 3 states, family says*, NBC News (Sept. 12, 2021), <https://nbcnews.to/3nyOz4t>.

³⁶ Mike Baker & Giulia Heyward, *Idaho allows overwhelmed hospitals across the state to ration care if necessary*, N.Y. Times (Sept. 16, 2021), <https://nyti.ms/30Ee0ZP>; Mike Baker, *‘Their Crisis’ Is ‘Our Problem’: Washington Grapples With Idaho Covid Cases*, N.Y. Times (Sept. 13, 2021), <https://nyti.ms/3e3vxxi>.

³⁷ *Vaccination to Prevent COVID-19 Outbreaks with Current and Emergent Variants — United States, 2021*, CDC (July 27, 2021), <https://bit.ly/3GhocGC> (indicating that residents of nursing homes in which 75% or less of staff are vaccinated experience higher rates of SARS-CoV-2 infection).

IV. Widespread Vaccination Is The Most Effective Way To Protect Healthcare Facility Staff And Patients 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 Studies have shown that unvaccinated people are at least twice as likely to become reinfected as are vaccinated people.³⁹

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 masks can be highly effective at limiting the transmission of SARS-CoV-2, many people choose not to wear masks, even when encouraged or legally required to do so. Noncontinuous mask-wearing and other inadequate personal protective equipment use has been linked to transmission of the

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, January–September 2021*, 70 *Morbidity & Mortality Weekly Rep.* 1539 (Nov. 5, 2021), <https://bit.ly/3kvoBwR> (finding 5.49 times higher odds of laboratory-confirmed COVID-19 among previously infected, unvaccinated 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 (Aug. 13, 2021), <https://bit.ly/306e4Bg>.

virus in healthcare facilities.⁴⁰ Vaccination is even more essential for healthcare facility staff, who may not be able to completely physically distance from others during the performance of their duties.⁴¹

Even for those who work remotely at times, vaccination provides the best protection against COVID-19. The virus spreads through respiratory droplets or aerosols when an infected individual talks, breathes heavily, sings, coughs, or sneezes. Particles containing the virus can spread more than six feet, and infection can occur in a matter of minutes.⁴² Infection can thus occur even in environments where staff use of shared spaces is staggered or reduced, or where staff are in physical proximity to each other only rarely.⁴³ And because staff who do not interact with patients can transmit the virus to those who do, a rule that applies only to staff members with patient contact would be insufficiently protective.

Although the district court concluded that the CMS rule “will have a crippling effect” on healthcare facilities by creating a shortage of services, App. 33a, that concern has not been borne out in hospital systems that have already imposed vaccination requirements. For example, when Houston Methodist Hospital first required its workers to be vaccinated, 15% were unvaccinated; that number dropped

⁴⁰ Richterman, *supra* note 11; Jessica Ibiebele et al., *Occupational COVID-19 exposures and secondary cases among healthcare personnel*, 49 Am. J. of Infection Control 1334 (Oct. 2021), <https://bit.ly/3II0IIo>.

⁴¹ Richterman, *supra* note 11.

⁴² *Appendices*, CDC (Nov. 12, 2021), <https://bit.ly/3nbxAos> (“close contact” definition); *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*, OSHA (updated June 10, 2021), <https://bit.ly/3s8qm7L>.

⁴³ Indeed, the World Health Organization considers remote workers at “lower risk[],” not no risk, of infection. *Preventing and mitigating COVID-19 at work*, at 2, World Health Organization (May 19, 2021), <https://bit.ly/3wMJ451>.

to 2% after the mandate, and only 153 workers resigned or were fired.⁴⁴ Similarly, at Indiana University Health, only 0.3% of employees resigned in the face of a vaccination requirement.⁴⁵ All but nine of South Shore Health's 5,649 staff complied with its COVID-19 vaccine requirement.⁴⁶

Immediate, widespread vaccination against COVID-19 is the surest way to protect healthcare facility staff, patients, and the public, and to end this costly pandemic.

CONCLUSION

For the reasons stated above and in Applicants' filings, Amici urge this Court to grant Applicants' application for a stay of the injunction pending appeal.

Respectfully submitted,

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⁴⁴ Jack J. Barry et al., *Unvaccinated Workers Say They'd Rather Quit Than Get a Shot, but Data Suggest Otherwise*, Scientific American (Sept. 24, 2021), <https://bit.ly/3kUYKOT>.

⁴⁵ *Id.*

⁴⁶ Jessica Trufant, *South Shore Health set to fire 9 staffers over COVID vaccine; 99.6% of employees vaccinated*, The Patriot Ledger (Dec. 10, 2021), <https://bit.ly/30en1ID>.