IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

SANDY BRICK, *et al.,* Plaintiffs, v. JOSEPH R. BIDEN, *et al.,* Defendants.	No. 2:21-cv-04386-JDC-KK **Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction**

INTRODUCTION

In recent weeks, federal courts have enjoined the Biden Administration's vaccine mandates on employees at companies with over 100 employees, *BST Holdings, L.L.C. v. OSHA*, No. 21-60845, 2021 U.S. App. LEXIS 33698 (5th Cir. Nov. 12, 2021); on employees of Medicaid and Medicare service providers, *Louisiana v. Becerra*, 3:21-CV-03970, 2021 U.S. Dist. LEXIS 229949 (W.D. La. Nov. 30, 2021), *aff'd* No. 21-30734 (5th Cir. Dec. 15, 2021); *Missouri v. Biden*, 4:21-cv-01329, 2021 U.S. Dist. LEXIS 227410 (E.D. Mo. Nov. 29, 2021), *aff'd* No. 21-3725 (8th Cir. Dec. 13, 2021) (summary order); and *Texas v. Becerra*, No. 2:21-CV-229-Z , 2021 U.S. Dist. LEXIS 239608 (N.D. Tex. Dec. 15, 2021); and on employees of companies with federal contracts, *Louisiana v. Biden*, No. 1:21-cv-03867-DDD, ECF No. 47 (W.D. La. Dec. 16, 2021); *Kentucky v. Biden*, No. 3:21-cv-00055-GFVT, 2021 U.S. Dist. LEXIS 228316 (E.D. Ky. Nov. 30, 2021); and *Georgia v. Biden*, No. 1:21-cv-163, 2021 U.S. Dist. LEXIS 234032 (S.D. Ga. Dec. 7, 2021). They have done so mainly for two reasons: that the Biden Administration's agencies skipped the necessary notice-and-comment rule-making

without good cause, and that each agency exceeded its statutory authority to impose a vaccine mandate, especially when all of the mandates are seen together as a package.

Especially given the holdings in *BST Holdings* from the Fifth Circuit and the *Louisiana* cases from two other judges of this district, this Court should enter a nationwide preliminary injunction against the Head Start mandate. Like the others, it was promulgated without notice-and-comment rulemaking without good cause and it exceeds the statutory authority of the Secretary of Health & Human Services.

BACKGROUND AND FACTS

On September 9, 2021, President Biden unveiled a comprehensive plan to vaccinate as many Americans as possible.[1] Proclaiming he was fed up with the decisions of some Americans to not get vaccinated, he looked to agency emergency rulemaking and executive orders in an attempt to force as many people as possible to vaccinate. Included in that plan, though less publicly prominent than other mandates, was a mandate on the approximately 280,000 Americans[2] employed by Head Start agencies (local, largely non-profit or governmental providers who receive federal funding to provide Head Start services). The White House announcement promised a forthcoming rule from the Department of Health & Human Services

[1] https://www.whitehouse.gov/covidplan/#schools.

[2] HHS data, https://eclkc.ohs.acf.hhs.gov/about-us/article/head-start-program-facts-fiscal-year-2019#:~:text=Head%20Start%20programs%20employed%20and,parents%20of%20Head%20Start%20children ("Head Start programs employed and contracted with 273,000 staff" in 2019).

(HHS), which contains the Office of Head Start, which administers Head Start programs. The same day, the director of the Office of Head Start at HHS sent a letter to Head Start providers introducing, "a new requirement for Head Start programs. All Head Start employees must be vaccinated against COVID-19." The letter promised "rulemaking to implement this policy."[3]

That rule was formally published in the Federal Register on Monday, November 30, 2021. 86 Fed. Reg. 68,052[4] (hereinafter "Head Start Rule"). The rule has three key components: (1) immediate implementation without notice-and-comment; (2) a vaccination mandate on all staff, student-facing contractors, and all volunteers to have received the second shot by January 31, 2022; and (3) a universal mask mandate on all Head Start participants over age two. The inclusion of all volunteers is a massive expansion of the order from the White House announcement, which only said it would cover staff. HHS data from 2019 indicates that approximately 1,061,000 adults volunteered in their local Head Start program, of whom approximately two-thirds were parents of program participant children.[5] Now, in order to serve a few hours a month as a reading tutor or room mom for their children's pre-K program, low-income parents will have to be vaccinated. Also, nothing in the White House's September 9 plan made any mention of masking.

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[3] https://eclkc.ohs.acf.hhs.gov/blog/vaccinating-head-start-staff-letter-director.

[4] See also a plain-language explanation from the Office of Head Start Director: https://www.acf.hhs.gov/blog/2021/11/new-requirement-head-start-staff-vaccination-and-universal-masking.

[5] https://eclkc.ohs.acf.hhs.gov/about-us/article/head-start-program-facts-fiscal-year-2019#:~:text=Head%20Start%20programs%20employed%20and,parents%20of%20Head%20Start%20children.

Plaintiffs are employees of Head Start programs in Louisiana and Ohio. Exhibits A and B, Decl. of S. Brick and J. Trenn. Their program did not have a vaccine mandate in place prior to the President's announcement. After the President's announcement and the notices from HHS, their employer has informed them that they must receive the first dose of a two-dose vaccine by January 3 or the single dose of a single-dose vaccine by January 31, the implementation deadline in the Head Start Rule. Plaintiffs have not obtained the COVID-19 vaccine and do not wish to do so. They filed the complaint in this case on December 17, 2021, to stop this unlawful invasion of their medical freedom.

STANDARD OF REVIEW

The standard for a preliminary injunction requires a movant to show (1) the substantial likelihood of success on the merits, (2) that he is likely to suffer irreparable harm in the absence of a preliminary injunction, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018).

ARGUMENT

I. The Plaintiffs are likely to succeed on the merits.

A. The Plaintiffs are likely to succeed on their procedural claim that HHS lacks "good cause" to skip notice-and-comment rulemaking.

The Head Start Rule entered into effect immediately, without normal notice-and-comment rulemaking, pursuant to a finding of good cause by the agency "that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule

issued." Head Start Rule, 86 Fed. Reg. at 68,058. In this instance, HHS asserts that good cause exists because the Delta variant wave and data on effectiveness of vaccination both provide good cause to believe the public interest is served by immediate implementation. *Id*. at 68,058–059.

Another judge of this Court recently considered whether "good cause" existed to skip notice-and-comment rulemaking by the Centers for Medicaid & Medicare Services, which issued an interim final rule requiring employees of health care facilities that receive Medicare or Medicaid patients to obtain the COVID-19 vaccine, and justified skipping notice-and-comment with the same arguments. 86 Fed. Reg. 61,555.

There, Judge Doughty noted, "The 'good cause' exception in 5 U.S.C. 553 is read narrowly in order to avoid providing agencies with an escape clause from the APA notice and comment requirements. Circumstances justifying reliance on this exception are 'indeed rare.' The good cause exception was described . . . as 'meticulous and demanding,' 'narrowly construed,' 'reluctantly countenanced,' and evoked only in 'emergency situations.'" *Louisiana v. Becerra*, 3:21-CV-03970, ECF No. 28, at *30 (Nov. 30, 2021) (collecting cases). "Due to this stringent standard, the good cause exception to notice and comment is rarely upheld." *Id*. at *30-31 (collecting eight cases). The Fifth Circuit did not disturb Judge Doughty's reasoning. *See Louisiana v. Becerra*, No. 21-30734 (5th Cir. Dec. 15, 2021). The Eastern District of Missouri, reviewing similar case law, recognized a similar standard. *See Missouri v. Biden*, 4:21-cv-01329, ECF No. 28, at *9a (Nov. 29, 2021).

And though the Fifth Circuit considered an OSHA Emergency Temporary Standard issued under different statutory authority than the Administrative Procedures Act, it too noted that the decision to issue an ETS without notice-and-comment is "an extraordinary power that is to be delicately exercised in only certain limited situations." *BST Holdings,* at *10 (cleaned up).

Judge Doughty rejected CMS's effort to establish good cause to evade notice-and-comment, saying, "After reviewing the reasons listed by CMS for bypassing the notice and comment requirement, the Court finds Plaintiff States are likely to succeed on the merits on this claim. It took CMS almost two months, from September 9, 2021 to November 5, 2021, to prepare the interim final rule at issue. Evidently, the situation was not so urgent. . ." *Louisiana*, *24.

Separately, Judge Drell of this District rejected the government's failure to engage in notice-and-comment rulemaking on the federal-contractor mandate: "We doubt that the pandemic makes compliance with a relatively short comment period impracticable two years into the pandemic…" *Louisiana*, No. 1:21-cv-03867-DDD, ECF No. 47, at *20 (W.D. La. Dec. 16, 2021). She underlined why such a failure is a real problem: "A regulation's comment period is critical for affected citizens to assert their rights and for the cooperative development of regulations that balance the needs of government and the rights of the public." *Id.* at *21.

The Fifth Circuit reached a similar conclusion in *BST Holdings* on the OSHA Mandate: "OSHA issued the Mandate nearly two months later, on November 5, 2021, and the Mandate itself prominently features yet another two-month delay. One could

query how an 'emergency' could prompt such a 'deliberate' response." *BST Holdings*, at *28 n.11. *See In re: MCP NO. 165*, No. 21-7000, ECF 380-2 at *23 (6th Cir. Dec. 15, 2021) (Sutton, J., dissenting from denial of initial hearing en banc) ("'In case of emergency break glass' this is not—unless we wish to sideline the notice-and-comment process . . . with respect to every future medical innovation concerning COVID-19 for this federal agency and other ones too."). The federal district courts considering the CMS mandate reached the same conclusion. In *Missouri*, the Court said "CMS's good cause claim is undermined by its own delay in promulgating the mandate." *Missouri,* *9. And in *Texas*, "Plaintiffs are likely to succeed on Count III of their Complaint because Defendants lack 'good cause' to skip the notice-and-comment period. Public comment would not be 'unnecessary,' but rather in the public interest." 2021 U.S. Dist. LEXIS 239608, at *21.

Here, the mandate was announced on September 9, but not published until November 30, several weeks after the OSHA and CMS mandates. If the delay in issuing those mandates undermines the agencies' justifications for skipping notice-and-comment procedures, then the Head Start Rule which was issued almost a month later than the other rules certainly cannot justify skipping notice-and-comment procedures. And whereas the CMS Mandate requires a second shot by January 4, the Head Start Mandate does not require a second shot until January 31.

Several other courts have also rejected efforts to use COVID-19 as an excuse to skip notice-and-comment. *State v. Becerra*, 2021 WL 2514138, at 35-36 (M.D. Fla., June 18, 2021) (CDC rule on cruise ships); *Regeneron Pharmaceuticals, Inc. v. United*

States Dept. of Health and Human Resources, 510 F. Supp. 3d, 29, 48 (S.D. NY, Dec. 30, 2020) (CMS's rule on drug prices); *Chamber of Commerce of the United States v. United States Dept. of Homeland Security*, 504 F. Supp. 3d 1077, 1094 (N.D. Cal., Dec. 1, 2020) (DHS rule for visa program); *Association of Community Cancer Centers v. Azar*, 509 F. Supp. 3d 482, 496 (D. Md., Dec. 23, 2020) (CMS rule on Medicare Part B). Defendants do not offer any different justifications from those rejected by the courts in these cases.

Given these holdings, especially those of the Fifth Circuit and Judge Doughty, this Court should enjoin the entire rule on this basis alone.

B. Plaintiffs are likely to succeed on their substantive legal claims.

The Head Start Rule claims it is promulgated "under the authority granted to the Secretary by sections 641A(a)(1)(C), (D) and (E) of the Head Start Act," 42 U.S.C. § 9836a(a)(1)(C)–(E)). 86 Fed. Reg. at 68,052. Section 9836a(a)(1)(C) provides HHS the authority to set "administrative and financial management standards" for Head Start programs. Section 9836a(a)(1)(D) provides HHS the authority to set "standards relating to the condition and location of facilities (including indoor air quality assessment standards, where appropriate)." And Section 9836a(a)(1)(E) provides HHS the authority to set "such other standards as the Secretary finds to be appropriate." Nothing in the Head Start Act explicitly authorizes a vaccine mandate. Nor do any of the sections on which HHS relies justify a vaccine mandate: it is not an administrative and financial management standard (which plainly refers to things like bookkeeping for grant tracking purposes), it is not related to the condition or

location of facilities, and it is not appropriate (and if it is appropriate, it represents a massive problem under the non-delegation doctrine).

1. This mandate is not an administrative or financial management standard.

The plain meaning of the statutory term "administrative and financial management standard," 42 U.S.C. § 9836a(1)(C), covers things like bookkeeping and compliance. For instance, HHS's Departmental Appeals Board upheld the termination of a Head Start grant for failure to observe "administrative and financial management standards" when it found misuse of funds, failure to pay employer-side taxes, lack of internal recordkeeping, and lack of an employee code of conduct. *In re Babyland Family Services, Inc.*, HHS Dept. Appeals Bd., DAB No. 2109, 2007 HHSDAB Lexis 62 (Aug. 28, 2007). These are the sorts of things that count as "administrative and financial management standards." If that phrase can mean "vaccinate all staff," it can mean anything.

This is similar to the analysis conducted by the *Kentucky* and *Georgia* Courts, which had to consider presidential power under the Federal Property and Administrative Services Act. Under precedent, the president has power over "administrative and management issues" in federal procurement systems. *Georgia*, at *29, quoting *AFL-CIO v. Kahn*, 618 F.2d 784, 789 (D.C. Cir. 1979). As the judge in *Georgia* rightly concluded, "EO 14042 goes far beyond addressing administrative and management issues in order to promote efficiency and economy in procurement and contracting, and instead, in application, works as a regulation of public health, which is not clearly authorized under the Procurement Act." *Id. See Kentucky*, at *20-21 ("it

strains credulity that Congress intended the FPASA, a procurement statute, to be the basis for promulgating a public health measure such as mandatory vaccination."). In the same way, this mandate goes "far beyond" setting financial and administrative management standards for Head Start programs and veers into the regulation of public health.

2. This mandate does not set standards for the condition and location of facilities.

The plain meaning of the statutory term "condition and location of facilities" is limited to the physical places that Head Start happens. "The plain meaning of 'facility,' as that word is used [here], is something 'that is built, constructed, installed, or established to perform some particular function or to serve or facilitate some particular end.'" *Lostrangio v. Laingford*, 261 Va. 495, 499, 544 S.E.2d 357, 359 (2001) (quoting Webster's Third New International Dictionary 812-13 (1993)). This provision gives HHS the power to regulate the safety of buildings and their surrounding spaces, not the quality or health consciousness of employees inside the buildings. *Texas*, 2021 U.S. Dist. LEXIS 239608, at *14 ("Mandating facility standards is drastically different from mandating who a healthcare provider hires or fires.").

The Secretary has already promulgated rules in the Code of Federal Regulations that apply this statutory authority, requiring that "premises are . . . kept free of undesirable and hazardous materials and conditions" and that "each facility's space, light, ventilation, heat, and other physical arrangements are consistent with the health, safety and developmental needs of children." 45 C.F.R. § 1304.53 (10). *See Camden Cty. Council on Econ. Opportunity v. United States HHS*, 586 F.3d 992, 995

(D.C. Cir. 2009) (Kavanaugh, J.) (upholding HHS decision to revoke designation after multiple warnings to an agency about an unsafe playground area with nails and trash present). Again, the HHS Departmental Appeals Board illustrates when the rule applies, such as a playground with the "presence of vines with berries, cluttered trash and leaves, and a play structure with splinters and rusty nails." *In re Camden Cty. Council on Econ. Opportunity*, HHS Dept. Appeals Bd., DAB No. 2116, 2007 HHSDAB Lexis 79 (Sept. 25, 2007).

It is simply an abuse of language to say that the ability to regulate HVAC systems in Head Start buildings means that HHS can regulate vaccination status in Head Start employees.

3. This mandate is not appropriate.

Finally, the Head Start Rule is not an "appropriate" exercise of the Secretary's power, for three reasons. First, it violates the major questions doctrine for the Secretary rather than Congress to make such a substantial decision as a vaccination mandate, especially one imposed nationwide through the piecemeal actions of various agencies. *BST Holdings*, at *23 ("the major questions doctrine confirms that the Mandate exceeds the bounds of OSHA's statutory authority"); *Louisiana*, at *27.

Second, it violates the federalism doctrine for the Secretary to implement a vaccination mandate when that power is properly reserved to the states as the primary public health authorities. *BST Holdings,* at *21 ("to mandate that a person receive a vaccine or undergo testing falls squarely within the States' police power"). *See Louisiana*, No. 1:21-cv-03867-DDD, ECF No. 47, at *18 (W.D. La. Dec. 16, 2021)

(finding the federal contractor mandate violates the Tenth Amendment by invading states' police power over public health); *Texas*, 2021 U.S. Dist. LEXIS 239608, at *15 ("public health and safety regulation beyond facility standards is emphatically the province of the States through their police powers.").

And third, it violates the non-delegation doctrine for the Secretary to wield such tremendous power with no greater guide than "appropriate." *Louisiana*, at *40 ("If CMS has the authority by a general authorization statute to mandate vaccines, they have authority to do almost anything they believe necessary, holding the hammer of termination of the Medicare/Medicaid Provider Agreement over healthcare facilities and suppliers."); *Kentucky*, at *26-27 ("If OSHA promulgating a vaccine mandate runs afoul of the nondelegation doctrine, the Court has serious concerns about the FPASA, which is a procurement statute, being used to promulgate a vaccine mandate for all federal contractors and subcontractors"). *See BST Holdings,* at *8.

The Fifth Circuit panel in *Louisiana* recognized that the statutory authorities and substantive realities of COVID-19 are different between OSHA and CMS, and presumably between them and Head Start. But the underlying legal principles remain constant, such that the Fifth Circuit concluded in *Louisiana*, "We cannot say that the Secretary has made a strong showing of likely success on the merits." 21-30734, at *3 (Dec. 15, 2021).[6]

[6] If anything, one of the distinctions mentioned by the Fifth Circuit favors plaintiffs here. Comparing the OSHA rule to the CMS rule, the panel noted that the CMS rule applies to "targeted health care facilities, especially nursing homes, are where COVID-19 has posed the greatest risk." *Louisiana*, No. 21-30734, at *3 (Dec. 15, 2021). Whereas health care facilities and nursing homes may pose more risk of

II. Plaintiffs are likely to suffer irreparable harm without an injunction.

This factor is clearly governed by the Fifth Circuit's holding in *BST Holdings* that "the Mandate threatens to substantially burden the liberty interests of reluctant individual recipients put to a choice between their job(s) and their jab(s)." *BST Holdings*, at *24. *Accord Louisiana*, at *41 ("citizens will suffer irreparable injury by having a substantial burden placed on their liberty interests because they will have to choose between losing their jobs or taking the vaccine.").

Moreover, "[b]eing deprived of a procedural right to protect its concrete interests (by violation of the APA's notice and comment requirements) is irreparable injury." *Louisiana,* at *41 (citing *Texas v. EEOC*, 933 F.3d 433, 447 (5th Cir. 2019)).

Plaintiffs are clearly in the same position. Without a preliminary injunction, they will suffer irreparable injury by being forced to choose between losing their jobs and taking the vaccine. Furthermore, their procedural interests were violated when Defendants avoided going through notice-and-comment rulemaking.

III. The balance of the equities favors the Plaintiffs.

By contrast, "[a]ny interest OSHA may claim in enforcing an unlawful (and likely unconstitutional) ETS is illegitimate. Moreover, any abstract 'harm' a stay might cause the Agency pales in comparison and importance to the harms the absence of a stay threatens to cause countless individuals and companies." *BST Holdings*, at *25. So too here. "Enjoining EO 14042 would, essentially, do nothing more than maintain

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COVID-19 transmission than the average workplace of adults, young children have experienced the least risk from this disease.

the status quo; entities will still be free to encourage their employees to get vaccinated, and the employees will still be free to choose to be vaccinated." *Georgia*, at *36. Issuing an injunction would only stop employees from being forced to get vaccinated because the federal government is compelling their employer to do so on pain of shutting down. *See Louisiana*, No. 1:21-cv-03867-DDD, ECF No. 47, at *23 (W.D. La. Dec. 16, 2021) (finding the balance of harms favored a preliminary injunction).

Additionally, "preserving the status quo is an important equitable consideration in the stay decision. Here, the Secretary's vaccine rule has not gone into effect." *Louisiana*, No. 21-30734, at *4. As on the CMS rule, so too here—this Court's prompt action enjoining the rule will preserve the status quo, which is that the mandate has not gone into effect.

IV. An injunction is in the public interest.

Again, as the Fifth Circuit stated in *BST Holdings*: "The public interest is also served by maintaining our constitutional structure and maintaining the liberty of individuals to make intensely personal decisions according to their own convictions—even, or perhaps particularly, when those decisions frustrate government officials." *BST Holdings*, at *26. And again, *Louisiana*: "The public interest is served by maintaining the constitutional structure and maintaining the liberty of individuals who do not want to take the COVID-19 vaccine. This interest outweighs Government Defendants' interests. It is very important that the public's interest be taken into

account by the Court before allowing the Government Defendants to mandate the vaccines." *Louisiana*, at *43.

More generally, there is "no public interest in the perpetuation of unlawful agency action. To the contrary, there is substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). If the Court agrees with the Plaintiffs on the merits, then it must certainly agree on this factor.

V. The injunction should be nationwide in scope.

A nationwide injunction is the correct remedy. The Fifth Circuit in *BST Holdings* issued a nationwide stay of the OSHA Mandate at a time even though motions were before it from only a handful of specific employers. *Compare BST Holdings*, at *7 n.5 (considering the case only from the specific private employers' perspective) with *id*. at *26-27 (issuing a nationwide stay). Similarly, the Eleventh Circuit recently affirmed the nationwide preliminary injunction issued as to the federal contractor mandate by the Southern District of Georgia. *Georgia v. President*, No. 21-14269-F (11th Cir. Dec. 17, 2021). Admittedly, a different panel of the Fifth Circuit recently reversed a nationwide injunction as to the CMS mandate, though that panel did not distinguish this holding of *BST Holdings*. *Louisiana v. Becerra*, No. 21-30734, 2021 U.S. App. LEXIS 37035, at *8 (5th Cir. Dec. 15, 2021).

CONCLUSION

If the Court reaches the conclusion the Plaintiffs are correct on their likelihood of success on the merits, then the other three factors in favor of an injunction are controlled by *BST Holdings*. Though not controlled by *BST Holdings* or the prior decisions of Judges Drell or Doughty in this district, both of those cases make strong persuasive precedent to conclude the Head Start Rule must be enjoined in its entirety. The easiest path for the Court to do so is on the lack of good cause to skip notice-and-comment, given the high standard and lack of success for the government in virtually every other Court where the question has arisen during COVID-19. In all events, this mandate should join the others under a nationwide injunction.

Respectfully Submitted,

/s/ Sarah Harbison

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December 23, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

SANDY BRICK, *et al.*, Plaintiffs, v. JOSEPH R. BIDEN, *et al.*, Defendants.	No. **Sandy Brick's Declaration in Support of Plaintiffs' Motion *for Preliminary Injunction***

DECLARATION OF SANDY BRICK

1. I am an adult of sound mind.
2. I am a resident of LeBlanc, Allen Parish, Louisiana.
3. I am a teacher at Kinder Head Start, a program of the Allen Action Agency, Inc., headquartered in Oberlin, Allen Parish, Louisiana.
4. I have been an employee of Allen Action Agency for nine years.
5. I teach one of the three classrooms offering services to Head Start students at the Kinder Head Start center.
6. I am not vaccinated.
7. I do not wish to become vaccinated at this time.
8. Prior to the federal rule, my employer did not have a vaccine mandate.
9. Louisiana law does not require me to wear a mask at work, my employer does not have a mask mandate, and I do not generally wear a mask at work.
10. After the federal Office of Head Start announced the vaccine mandate for Head Start employees, my supervisor told our team members that all staff would

have to comply or face termination. In particular, we were told that we had to receive the first dose of a two-dose vaccine by January 3, and a second dose (or the first dose of a one-dose vaccine) by January 31 or we would be terminated because of the federal rule requiring it.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 15, 2021.

Signed: Sandy Brick

LeBlanc, Allen Parish, Louisiana

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

SANDY BRICK, *et al.,* Plaintiffs, v. JOSEPH R. BIDEN, *et al.,* Defendants.	No. **Jessica Trenn's Declaration in Support of Plaintiffs' Motion for Preliminary Injunction**

DECLARATION OF JESSICA TRENN

1. I am an adult of sound mind.
2. I am a resident of Ashtabula, Ohio.
3. I am a co-teacher at Ashtabula Head Start, a program of the Ashtabula County Community Action Agency, headquartered in Ashtabula, Ohio.
4. I have been an employee of Ashtabula Head Start for about 2 years.
5. I am a co-teacher in the toddler classroom at Ashtabula Head Start.
6. I am not vaccinated.
7. I do not wish to become vaccinated at this time.
8. Prior to the federal rule, my employer did not have a vaccine mandate.
9. Ohio law does not require me to wear a mask at work, my employer does not have a mask mandate, and I do not generally wear a mask at work.
10. After the federal Office of Head Start announced the vaccine mandate for Head Start employees, I received an email from Andrea Rosipko, Head Start Program Director at the Ashtabula County Community Action Agency,

informing me that due to the federal Head Start vaccine mandate, obtaining the COVID-19 vaccine would be a condition of my employment and if I failed to obtain the vaccine and meet the deadlines, I would be fired on January 31, 2022.

11. The email stated that one must obtain the first dose of the Moderna COVID-19 vaccine by January 3rd, the first dose of Pfizer-BioNTech COVID-19 vaccine by January 10, the first and only dose of Johnson & Johnson COVID-19 vaccine by January 10, or obtain an approved objection by January 10. Further, all employees must obtain the second dose of Moderna and Pfizer-BioNTech vaccines by January 31. Should an employee fail to meet one of these deadlines "it will be presumed [the employee has] rendered [their] resignation and [their] employment will end as of January 31st."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.