

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

THE STATE OF LOUISIANA,
By and through its Attorney General, JEFF
LANDRY, et al.,

PLAINTIFFS,

v.

XAVIER BECERRA, in his official capacity
as Secretary of Health and Human Services, et
al.,

DEFENDANTS.

Civil Action No. 3:21-cv-03970

District Judge Terry A. Doughty

Magistrate Judge Kayla D. McClusky

**PLAINTIFF STATES' MOTION FOR EXPEDITED CONSIDERATION OF MOTION
FOR PRELIMINARY INJUNCTION ON WRITTEN SUBMISSIONS**

NOW INTO COURT, through undersigned counsel, come Plaintiff States, who respectfully request the Court to expedite consideration of their Motion for Preliminary Injunction (R. Doc. 2) and render judgment on or **before 5:00 p.m. CT on December 5, 2021**, to avoid the federal government's self-imposed December 6 deadline for mandatory vaccination or termination of millions of healthcare workers. Plaintiffs States are satisfied that a hearing is not necessary in this instance—where the issues are primarily legal and disputed facts can be sufficiently reconciled on the submissions—but stand prepared to participate in an expedited proceeding if the Court deems oral argument or testimony necessary.

Plaintiff States have conferred with counsel for Defendants, who requested that the Court be advised as follows: “The defendants defer to the Court’s judgment as to whether it desires to hold argument on the motion. If the Court elects to do so, the defendants respectfully request that it hold argument by video conference or telephonically, as conflicting personal and professional

obligations would pose a challenge to the defendant's counsel's ability to appear for an in-person hearing next week."

WHEREFORE, Plaintiff States respectfully pray for an expedited ruling on their Motion for Preliminary Injunction prior to the vaccination deadline of December 6, 2021 imposed by the CMS Vaccination Mandate.

Dated: November 29, 2021

Respectfully Submitted,

By: /s/ Jimmy R. Faircloth, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I presented the above and foregoing for filing and uploading to the CM/ECF system which will send electronic notification of such filing to all counsel of record.

Alexandria, Louisiana, this 29th day of November, 2021.

/s/ Jimmy R. Faircloth, Jr.

OF COUNSEL

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Civil Action No. 3:21-cv-03970

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**MEMORANDUM IN SUPPORT OF PLAINTIFF STATES' MOTION FOR EXPEDITED
CONSIDERATION OF MOTION FOR PRELIMINARY INJUNCTION ON WRITTEN
SUBMISSIONS**

I. Introduction

Plaintiff States respectfully request the Court to expedite consideration of their Motion for Preliminary Injunction (R. Doc. 2) on the briefs. To ensure effective relief and to prevent irreparable harm to millions of healthcare workers nationwide, Plaintiff States request that this Court issue its preliminary injunction ruling **by 5:00 p.m. CT on December 5, 2021** to allow Plaintiff States time to seek emergency relief at the appellate level, if necessary, before Plaintiff States' citizens must receive the first (or single) COVID-19 vaccine dose or request a medical or religious exemption by December 6, 2021. Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555, 61,571, 61,573, 61,574 (Nov. 5, 2021).

II. Expedited Consideration is Necessary to Avoid Irreparable Harm

This matter involves a challenge by a coalition of 14 States to the Centers for Medicare and Medicaid Services' Interim Final Rule ("CMS Vaccination Mandate"), which imposes an

unprecedented federal vaccine mandate on millions of healthcare workers nationwide. An expedited ruling is necessary to prevent immediate and irreparable harm prior to the December 6, 2021 initial vaccination deadline. There is no question that the vaccine mandate threatens irreparable harm. *See BST Holdings, LLC v. OSHA*, __F. 4th__, 2021 WL 5279381, at *8 (5th Cir. Nov. 12, 2021) (staying OSHA vaccination mandate). Citizens’ liberty interests are “substantially burden[ed]” by being “put to a choice between their job(s) and their job(s).” *Id.* And Plaintiff States will be irreparably harmed “by the business and financial effects of . . . lost or suspended employee[s], compliance costs and monitoring costs associated with the mandate, the diversion of resources necessitated by the mandate, or by . . . stiff financial penalties.” *Id.* Any harm to Defendants, in contrast, “pales in comparison and importance to the harms the absence of [an expedited ruling] threatens to cause countless individuals and [the States].” *Id.* *See also Texas v. Biden*, No. 2:21-CV-067-Z, 2021 WL 3603341, at *28 (N.D. Tex. Aug. 13, 2021) (staying nationwide permanent injunction “for 7 days to allow the federal government time to seek emergency relief at the appellate level”).

This Court has “broad discretion . . . to control its docket in order to promote ‘economy of time and effort for itself, for counsel, and for litigants.’” *Hungerford v. Smith & Nephew, Inc.*, No. 2:15-CV-2754, 2016 WL 4499461, at *1 (W.D. La. Aug. 23, 2016) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). Absent preliminary relief by December 5—an expedited timeframe imposed by the federal government itself when hurriedly issuing its CMS Vaccination Mandate—millions of healthcare workers will face the choice of job loss in the midst of the holidays or forced vaccination. Ominously, this impending mass exodus of healthcare workers will critically impact access to care for facilities receiving Medicare and Medicaid funding, particularly in rural communities, who already face staffing shortages prior to vaccination mandates. For these reasons,

good cause surely exists for an expedited ruling on Plaintiff States' Motion for Preliminary Injunction.

III. A Hearing is Not Requested or Required

A hearing is not requested by Plaintiff states. Defendants requested delivery of the following statement: "The defendants defer to the Court's judgment as to whether it desires to hold argument on the motion. If the Court elects to do so, the defendants respectfully request that it hold argument by video conference or telephonically, as conflicting personal and professional obligations would pose a challenge to the defendant's counsel's ability to appear for an in-person hearing next week."

Second, a hearing is not required. Rule 65 "implies a hearing" to allow a defendant the opportunity to challenge facts adduced in support of a motion for preliminary injunction. *Commerce Park at DFW Freeport v. Mardian Const. Co.*, 729 F.2d 334, 341 (5th Cir.1984) ("where factual disputes are presented, the parties must be given a fair opportunity and a meaningful hearing to present their differing versions of those facts before a preliminary injunction may be granted"). *See also Bonds v. McCain*, 1:20-CV-00293, 2021 WL 1238849, at *1 (W.D. La. Mar. 17, 2021), report and recommendation adopted, 1:20-CV-00293-P, 2021 WL 1238972 (W.D. La. Apr. 1, 2021). But "the Fifth Circuit has repeatedly held that no evidentiary hearing on a motion for preliminary injunction is required when there are no genuine factual disputes at issue." *Bezot v. United States*, 276 F. Supp. 3d 576, 619 (E.D. La. 2017), *aff'd*, 714 Fed. App'x 336 (5th Cir. 2017) (citing *Heil Trailer Int'l Co. v. Kula*, 542 Fed. App'x 329, 334 & n.15 (5th Cir. 2013)). Other circuits apply the same rule. *See Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 552 (6th Cir. 2007) ("our Rule 65 jurisprudence indicates that a hearing is only required when there are disputed factual issues, and not when the issues are primarily

questions of law”). Moreover, because findings on a motion for preliminary injunction rest on “probable outcomes,” not binding findings of fact, documentary evidence may be considered. *Campbell Soup Co. v. Giles*, 47 F.3d 467, 472 (1st Cir. 1995).

In this instance, the issues are primarily legal and the facts can be determined from the documentary evidence for purposes of a preliminary injunction.

IV. Conclusion

Plaintiff States respectfully request that this Court expedite consideration of their Motion for Preliminary Injunction on the filings.

Dated: November 29, 2021

Respectfully Submitted,

By: /s/ Jimmy R. Faircloth, Jr.

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Civil Action No. 3:21-cv-03970

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ORDER

Considering the Motion for Expedited Consideration of Motion for Preliminary Injunction on Written Submissions by Plaintiff States, and having determined that an expedited ruling is warranted and that a hearing is neither requested nor required,

The motion is **HEREBY GRANTED**. The matter will be under submission upon completion of briefing, with an expedited decision forthcoming.

This Order entered on the _____ day of _____, 2021 in Monroe, Louisiana.

**HONORABLE TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE**