

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

STATE OF TEXAS; TEXAS HEALTH )  
AND HUMAN SERVICES COMMISION, )

Plaintiffs, )

v. )

XAVIER BECERRA, in his official capacity as )  
Secretary of the United States Department of )  
Health and Human Services; UNITED STATES )  
DEPARTMENT OF HEALTH AND HUMAN )  
SERVICES; CHIQUITA BROOKS-LASURE, in )  
her official capacity as Administrator of the )  
Centers for Medicare & Medicaid Services; )  
MEENA SESHAMANI, in her official capacity )  
as Deputy Administrator and Director of )  
Center for Medicare; DANIEL TSAI, in his )  
official capacity as Deputy Administrator and )  
Director of Medicaid and CHIP Services; THE )  
CENTERS FOR MEDICARE & MEDICAID )  
SERVICES; JOSEPH R. BIDEN, in his official )  
capacity as President of the United States; )  
UNITED STATES OF AMERICA; )

Case No. 2:21-CV-00229-Z

Defendants. )

**AMENDED UNNORPOSED MOTION OF UNITED STATES REPRESENTATIVES  
JODEY ARRINGTON, ET AL. FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*  
BRIEF IN SUPPORT OF PLAINTIFFS’ MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 7, United States Representatives Jodey Arrington, Kevin Brady, Michael Burgess, Dan Crenshaw, Jake Ellzey, Pat Fallon, Louie Gohmert, Ronny L. Jackson, M.D., August Pfluger, Chip Roy, Pete Sessions, Roger Williams, and Beth Van Duyne (the “Texas Representatives”) respectfully move this Court for leave to file the

attached amicus curiae brief in support of the Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 6). As set forth in the enclosed Certificate of Conference, plaintiffs and the defendants consent to Representatives Kevin Brady, Michael Burgess, Dan Crenshaw, Jake Ellzey, Pat Fallon, Louie Gohmert, Ronny L. Jackson, M.D., August Pfluger, Chip Roy, Pete Sessions, Roger Williams, and Beth Van Duyne's motion for leave to file a brief as amicus curiae.

In accordance with Local Rule 7.2(b), counsel for the Texas Representatives has conferred with counsel for Plaintiffs and Defendants. All parties have consented to the filing of the proposed brief as amicus curiae. This brief is timely filed within seven days of the Plaintiffs' Motion for Preliminary Injunction, which is the identical amount of time permitted for an *amicus curiae* brief governed by Federal Rule of Appellate Procedure 29(a)(6).

The Texas Representatives state the following in support of this Motion

### **ARGUMENT**

Local Rule 7.2(b) requires *amici curiae* to set forth their interest in the outcome of the litigation. Federal Rule of Appellate Procedure 29(a) offers comparable guidance. In accordance with Federal Rule of Appellate Procedure 29(a)(3)(B), the motion must also state the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

Movants are thirteen United States Representatives:

- Representative Jodey Arrington represents the 19<sup>th</sup> Congressional District of Texas.
- Representative Kevin Brady represents the 8<sup>th</sup> Congressional District of Texas.
- Representative Michael C. Burgess, M.D., represents the 26th Congressional District of Texas.
- Representative Dan Crenshaw represents the 2<sup>nd</sup> Congressional District of Texas.

- Representative Jake Ellzey represents the 6<sup>th</sup> Congressional District of Texas.
- Representative Pat Fallon represents the 4<sup>th</sup> Congressional District of Texas.
- Representative Louie Gohmert represents the 1<sup>st</sup> Congressional District of Texas.
- Representative Ronny L. Jackson, M.D., represents the 13<sup>th</sup> Congressional District of Texas.
- Representative August Pfluger represents the 11<sup>th</sup> Congressional District of Texas.
- Representative Chip Roy represents the 21<sup>st</sup> Congressional District of Texas.
- Representative Pete Sessions represents the 17<sup>th</sup> Congressional District of Texas.
- Representative Roger Williams represents the 25<sup>th</sup> Congressional District of Texas.
- Representative Beth Van Duyne represents the 24<sup>th</sup> Congressional District of Texas.

Each of these members of congress have heard grave concerns from their constituents, healthcare workers, hospitals, and patient advocates regarding the impact that the Centers for Medicare and Medicaid Services' ("CMS") Interim Final Rule with Comment Period entitled "Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination," 86 Fed Reg. 61,555 (Nov. 5, 2021), will have on their districts, and the Medicaid program in Texas. It covers a wide array of health care facilities, including Medicare- and Medicaid-certified providers and suppliers such as hospitals, long-term care facilities, and home health agencies. 86 Fed Reg. 61 at 61,569-70. Unlike the OSHA vaccine mandate for large private employers, there is no testing alternative to vaccination. Failure to comply will result in monetary penalties, denial of payment, and, potentially, termination of the Medicare/Medicaid provider agreements. *Id* at 61,574.

The representatives listed above have reviewed the plaintiff's position and motion for a Temporary Restraining Order and Preliminary Injunction and believe that it has a compelling interest in

emphasizing to the Court the impact of the CMS Vaccine Mandate on Texas's ability to meet the healthcare needs of their constituents. *Amici* have an essential duty to their constituents to serve as a liaison between the citizens of their districts and federal agencies. Consistent with their interests in protecting vulnerable patient populations in Texas, and ensuring higher quality health care for all Texans, *amici* have a compelling interest in drawing this Court's attention to the impact the CMS Vaccine Mandate will have on Texas's ability to meet the health care needs of its citizens. Because of the already-existing labor shortage in Texas, an injunction should be entered because the mandate will further exacerbate the healthcare staffing shortage facing Texas communities, especially rural ones. The Court should grant the stay to allow time to resolve the crucial legal issues raised before forcing our healthcare workers to choose between agreeing to be injected with a vaccine or losing their livelihoods.

### CONCLUSION

For the foregoing reasons, the listed members of the Texas Republican Delegation of the House's Amended Motion for Leave to File an Amicus Curiae Brief in Support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction. Pursuant to Local Rule 7.1, a proposed order is included with this motion, as well as the proposed brief, a Certificate of Conference, and a Certificate of Service.

Dated: November 23, 2021

Respectfully submitted,

/s/ Matthew R. Miller

Matthew R. Miller

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**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule 7.1(b), counsel for the representatives listed conferred with counsel for the parties to determine whether they oppose the party's motion for leave to participate as an amicus curiae. By emailed dated November 19, 2021, counsel for plaintiffs stated that plaintiffs consent to the motion. By email dated November 22, 2021, counsel for defendants stated that defendants consent to the motion.

*/s/ Matthew R. Miller*  
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Matthew R. Miller

**CERTIFICATE OF SERVICE**

On November 23, 2021, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties to the action—Case No. 2:21-CV-00229-Z—electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

*/s/ Matthew R. Miller*  
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Matthew R. Miller

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**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION OF  
UNITED STATES REPRESENTATIVES JODEY ARRINGTON, ET. AL.  
FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

This Cause came before the Court for review on the Unopposed Motion of United States Representatives Jodey Arrington, Kevin Brady, Michael Burgess, Dan Crenshaw, Jake Ellzey, Pat Fallon, Louie Gohmert, Ronny L. Jackson, M.D., August Pfluger, Chip Roy, Pete Sessions, Roger Williams, and Beth Van Duyne (the “Texas Representatives”) for Leave to File Brief as *Amici Curiae* in Support of Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction. The Court has reviewed the file and the applicable law, and being fully advised in the premises, GRANTS the motion.