

No. 21A240

In The
Supreme Court of the United States

JOSEPH R. BIDEN, JR., PRESIDENT
OF THE UNITED STATES, *et al.*,

Applicants,

v.

STATE OF 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 *AMICI CURIAE* BAPTIST HOMES &
HEALTHCARE MINISTRIES AND THE CHRISTIAN
LIFE COMMISSION OF THE MISSOURI BAPTIST
CONVENTION SUPPORTING RESPONDENTS**

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**MOTION FOR LEAVE TO FILE BRIEF
OF *AMICI CURIAE* BAPTIST HOMES &
HEALTHCARE MINISTRIES AND THE
CHRISTIAN LIFE COMMISSION OF THE
MISSOURI BAPTIST CONVENTION
SUPPORTING RESPONDENTS.**

Baptist Homes & Healthcare Ministries (BHHM) and the Christian Life Commission of the Missouri Baptist Convention (CLC MBC) respectfully move under Rule 37.2(b) of the Rules of this Court for leave to file the attached brief as *Amici Curiae* in support of Respondents State of Missouri, *et al.*, in Case No. 21A240.¹ Your *Amici* also seek leave to file their brief with four days' notice to the parties, which is fewer than ordinarily required by this Court's Rule 37.2(a).

BHHM operates a faith-based Long-Term Care Facility and Skilled Nursing Facility in Missouri that receives Medicare and Medicaid funds, and thus the CMS Mandate affects the Home. The facts presented by BHHM in Missouri show the unique impact of the Mandate on similar religious ministries around the country, which the government parties may not fully represent.

Similarly, the CLC MBC is the public policy and religious liberty arm of the Missouri Baptist Convention. It vigorously advocates for the public interest in

¹ No counsel for any party authored this *amicus* brief in whole or in part, and no person or entity other than *amici curiae*, its members, or its counsel made a monetary contribution intended to fund the brief's preparation or submission. SUP. CT. R. 37.6

preventing the violation of a party's constitutional rights that impact Baptist principles.

Counsel for *Amici* have consulted with the parties' counsel and on December 26, 2021, giving them notice of intent to file this brief. The briefing schedule prevented giving ten days' notice. Applicants took no position on the filing of this brief. Respondents consented to a timely filing.

To the extent that leave is required, *Amici* respectfully move for leave to file the attached brief electronically and on unbound 8½- by 11-inch paper. No party objects. Should the Clerk or the Court so require, *Amici* will re-file in booklet format promptly. See SUP. CT. R. 21.2(c).

For these reasons, *Amici Curiae* request leave to file the attached, with fewer than ten days' notice.

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INTEREST OF THE *AMICI CURIAE*

The Missouri Baptist Convention (MBC) is the state convention for Southern Baptist churches in Missouri. The Southern Baptist Convention (SBC) is the nation's largest Protestant denomination, with about 50,000 churches and 16 million members. The MBC is comprised of about 1800 independent local churches, with about a half million members.

Baptist Homes & Healthcare Ministries (BHHM) is a Missouri nonprofit, tax-exempt corporation, affiliated with the Missouri Baptist Convention. It is headquartered in Jefferson City, Missouri. Its mission is to be a distinctively Christian ministry, called to joyfully serve in a Christ-like manner by educating, advocating, and caring for the aging for the glory of God.

BHHM operates a network of faith-based senior adult facilities with about 250 employees, including a Long-Term Care and Skilled Nursing Facility in Independence, Missouri, that is CMS-certified to receive Medicare and Medicaid funds. BHHM owns facilities in six other towns in Missouri and expects to apply for CMS certification for each location. Thus, BHHM would be subject to the CMS vaccine mandate if the Eastern District of Missouri's injunction is stayed or vacated.

Under the BHHM corporate charter, MBC is the "sole member" of the corporation, meaning MBC elects the BHHM board of trustees, and MBC exercises oversight and accountability to ensure ministry

compatibility with the MBC and SBC statement of faith, *Baptist Faith & Message*, 2000.

BHHM Bylaw 7 declares that:

[BHHM] hires and prefers qualified employees who affirm these truths without reservation, express a personal faith in Jesus Christ as Lord and Savior, join with Baptist Convention-affiliated churches that affirm the same statement of faith, and support the Southern Baptist Cooperative Program efforts of such churches. All administrators, and employees must annually indicate their on-going commitment to perform their duties and speak consistent with and not contrary to the BFM 2000.

Thus, BHHM sees its employees and volunteers as participants in ministry. Their jobs are not “just jobs,” but religious ministry, even though not all are “ministerial positions.” Each staffer is a representative of Missouri Baptists and is expected to speak and to live consistent with the *Baptist Faith & Message* and Christian character.

The **Christian Life Commission of the Missouri Baptist Convention** is the public policy and religious liberty arm of the Missouri Baptist Convention. It vigorously advocates for the public interest in preventing the violation of constitutional rights, especially First Amendment rights of its members, churches, and ministries. The CLC commissioners, named by the MBC, have adopted the *Baptist Faith & Message*, 2000, as the CLC’s statement of faith.

Religious freedom is an indispensable, bedrock value for Southern Baptists. The Constitution’s guarantee of freedom from governmental interference in matters of faith, church autonomy, and free exercise is a crucial protection on which SBC members and adherents of other faith traditions depend as they follow the dictates of their conscience under God in the practice of their faith, even in the marketplace and in the public square.

Your *Amici* believe the outcome of this case will affect faith-based ministries well beyond BHHM, the CLC, and the MBC. At stake is the freedom of religious ministries to manage their staff and resources according to the dictates of religious conscience. For that reason, your *amici* draw the Court’s attention to the vaccine mandate’s violation of religious conscience and ministry autonomy for Baptists and other church-related ministries.



STATEMENT OF CASE

This case involves a challenge to an Interim Final Rule promulgated by the U.S. Department of Health and Human Services and its Centers for Medicare and Medicaid Services (“CMS”). Specifically, CMS’s IFR imposes an unprecedented federal “Vaccine Mandate” on healthcare facilities that receive Medicare or Medicaid funds; it would require nearly every full- or part-time employee, trainee, *volunteer*, or third-party contractor to be vaccinated against SARS-CoV-2 (“COVID”) and

to have received at least a first dose of the vaccine before December 6, 2021 (now extended to January 27, 2022).

Ten states sued in the U.S. District Court for the Eastern District of Missouri, seeking a preliminary injunction pending a full judicial review of the mandate's legality.² On November 29, 2021, Judge Matthew T. Schelp issued a preliminary injunction, prohibiting CMS from enforcing the Mandate on any covered healthcare facilities or suppliers within the ten Plaintiff States, pending a trial on the merits of this action. The Biden Administration applied to this Court for a stay of the injunction, while it appeals to the Eighth Circuit.

◆

SUMMARY OF ARGUMENT

The trial court properly held that the CMS Vaccine Mandate is unconstitutional for multiple reasons, so the application for stay of the injunction should be denied.

The CMS Vaccine Mandate unleashes arbitrary and capricious executive power, unauthorized by Congress, and unpermitted by the Constitution. The nursing home industry was already in a crisis of

² Plaintiffs, the States of Missouri, Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, South Dakota, North Dakota, and New Hampshire, sued to challenge the Centers for Medicare and Medicaid Services ("CMS") Interim Final Rule with Comment Period ("IFC") entitled "Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination." 86 Fed. Reg. 61,555 (Nov. 5, 2021).

understaffing, but the CMS Mandate has worsened the harm, deepening the so-called Great Resignation³ in healthcare while many other areas of the economy are in recovery.

In addition to general economic harm caused by the Mandate, CMS has caused serious constitutional harms for religious ministries. This is especially true of ministries in the nursing home industry who have religious beliefs in the autonomy of religious ministries to control staff and resource decisions to accomplish the religious mission, without government interference. BHHM's history is illustrative of such convictions and shows the harm of these constitutional violations. The CMS Mandate violates the First Amendment rights of such ministries and individuals, and also violates Free Exercise rights under the RFRA.

◆

ARGUMENT

I. The CMS Mandate Worsens the Economic Harm on all Nursing Homes.

Nursing home staffing shortages were already at a crisis point, but the Mandate threatens irreparable economic harm to the nursing home industry. The *Washington Post* reported on December 28, 2021:

³ See Ed Yong, *Why Health-Care Workers are Quitting in Droves*, *The Atlantic* (Nov. 16, 2021), <https://www.theatlantic.com/health/archive/2021/11/the-mass-exodus-of-americas-health-care-workers/620713/> (last accessed December 29, 2021).

According to the U.S. Bureau of Labor Statistics, 425,000 employees, many of them low-paid certified nursing assistants who are the backbone of the nursing home workforce, have left since February 2020 . . .

Nearly 237,000 workers left during the recovery, data through November show. No other industry suffered anything close to those losses over the same period. . . .

Workers in the broader health-care industry have been quitting in record numbers for most of the pandemic, plagued by burnout, vulnerability to the coronavirus and poaching by competitors. Low-wage workers tend to quit at the highest rates, Labor Department data show, and nursing home workers are the lowest paid in the health sector, with nonmanagerial earnings averaging between \$17.45 an hour for assisted living to \$21.19 an hour for skilled nursing facilities, according to the BLS.⁴

CMS announced the Mandate on November 5, 2021. On November 12, 2021, the Associated Press reported that in ten states, including Missouri, over 40% of nursing home staffers were unvaccinated, and that Missouri's health department anticipated that many workers would quit rather than comply with the CMS

⁴ Lenny Bernstein and Andrew Van Dam, *Nursing Home Staff Shortages Are Worsening Problems at Overwhelmed Hospitals*, Washington Post (Dec. 28, 2021), at <https://www.washingtonpost.com/health/2021/12/28/nursing-home-hospital-staff-shortages/> (last accessed: December 28, 2021).

Mandate.⁵ Facilities that fail to comply with the Mandate may face penalties or even removal from the Medicare and Medicaid programs.⁶

Anticipating that the vaccine Mandate might result in resignations or discharges, the Missouri Department of Health and Senior Services proposed an emergency rule to allow under-staffed homes to close for up to two years without losing their state license.⁷ This would allow facilities to return to the field after the shortage is over.

The economic impact of the Mandate is hard to overstate. CMS estimates *first-year* compliance costs at \$1.38 billion. 86 Fed. Reg. at 61,613. Judge Schelp, at page five of his Memorandum and Order, observed:

Those costs, though, do not take into account the economic significance this mandate has from the effects on facilities closing or limiting services and a significant exodus of employees

⁵ Davis A. Lieb, Associated Press, *Missouri to Let Nursing Homes Close Due to Vaccine Mandate*, U.S. News & World Report (Nov. 12, 2021), <https://www.usnews.com/news/best-states/missouri/articles/2021-11-12/missouri-to-let-nursing-homes-close-due-to-vaccine-mandate> (last accessed Dec. 28, 2021).

⁶ Tessa Weinberg, *Missouri Gives Nursing Homes a Way to Temporarily Close in Face of Federal Vaccine Rule*, Missouri Independent (Nov. 15, 2021), <https://missouriindependent.com/2021/11/15/missouri-gives-nursing-homes-a-way-to-temporarily-close-in-face-of-federal-vaccine-rule/> (last accessed December 28, 2021).

⁷ See Proposed Rule Amendment (proposed Nov. 12, 2021) (to be codified at 19 CSR 30-82.010), <https://health.mo.gov/about/proposedrules/pdf/19CSR-30-82.010.pdf> (last accessed December 28, 2021).

that choose not to receive a vaccination. Likewise, the political significance of a mandatory coronavirus vaccine is hard to understate, especially when forced by the heavy hand of government. Indeed, it would be difficult to identify many other issues that currently have more political significance at this time.

So the Mandate has worsened the economic harms suffered by all nursing homes. But the Mandate also causes unique constitutional harms to be suffered by religious ministries in particular.

II. The CMS Mandate Causes Unique Constitutional Harms to Religious Ministries.

A. The CMS Mandate Violates the First Amendment.

The First Amendment recognizes the “autonomy” of religious organizations, especially as to decisions about employing ministers or religious workers to accomplish the religious purposes of the church or organization. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 189 (2012). The “church autonomy” doctrine broadly assures that faith-based organizations will enjoy “independence from secular control or manipulation.” *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952), and “autonomy with respect to internal management decisions that are essential to the institution’s central mission.” *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). “Only a component of this

autonomy is the selection of the individuals who play certain key roles.” *Id.* Thus, religious autonomy guarantees that “a religious community defines itself” by determining what “activities are in furtherance of” its mission and who gets to “conduct them.” *Presiding Bishop v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring in the judgment).

The CMS Mandate “commandeers” religious ministries and their work “to compel [their] employees” to comply with the Mandate. *BST Holdings, LLC v. OSHA*, 17 F.4th 604, 617 (5th Cir. 2021). Covered religious ministries are required to interrogate their ministers and employees to discover their personal health information and to discern the true thoughts, intentions and spiritual motives in their hearts regarding their medical decision-making, often influenced by their religious beliefs. The First Amendment deplors this kind of “secular control or manipulation” of the religious organization. *Kedroff*, 344 U.S. at 116. Further, the Mandate requires religious ministries to include the vaccine in the “terms and conditions of employment,” thereby violating the First Amendment, *Amos*, 440 U.S. at 502-3, and interfering with their ability to “select[] the individuals who play certain key roles.” *Our Lady of Guadalupe*, 140 S. Ct. at 2060.

The Mandate applies, even though caregivers at BHHM are recognized as “ministers” under BHHM’s governing documents, or under *Our Lady of Guadalupe*, *id.* at 2055. Other staff members at BHHM who are not in direct patient care still interface with residents, family and ministry friends, and fall under the

“ministerial exception.” *Id.* at 2060. And the interference with the Religious Ministry’s ability to hire any employee to “conduct” “activities . . . in furtherance of their religious missions violates religious autonomy. *Amos*, 483 U.S. at 342 (Brennan, J., concurring in the judgment). Thus, the Mandate violates the First Amendment.

B. BHHM Illustrates how the CMS Mandate Violated Constitutional Rights of Religious Conscience and Ministry Autonomy.

In the original Complaint, the Plaintiff States made general allegations about the failure of CMS to anticipate the unique harm of inserting federal power into the employment decisions of religious institutions.⁸

119. Upon information and belief, some religious healthcare institutions received Medicare and Medicaid funding and will be subject to the CMS vaccine mandate. The mandate will thus require those religious institutions to terminate ministerial employees in violation of the First Amendment. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct.

⁸ Since there has been no discovery in the trial court, Respondents filed affidavits in support of their Motion for Preliminary Injunction, which the court summarized in its order. See *E.D. Injunction*, p. 25ff. The lower court does not mention whether any affidavits addressed the precise issue in paragraph 119, the impact on religious organizations. In this brief, *Amicus* BHHM provides some factual support on that issue.

2049, 2061 (2020). But CMS never considered this problem when imposing its mandate. (See *Compl.*, p 28, ¶119).

Of course, the States cannot fully vindicate the religious principles of a religious organization. The trial court made findings based on affidavits that the CMS Mandate adversely impacted nursing homes, but did not discuss faith-based facilities and the violation of their religious autonomy. *See* Injunction at 25, *et seq.*

1. CMS Mandate Redirects BHHM Ministry Resources and Mission.

For BHHM, the violation of its religious autonomy in handling staff and resources was more than “information and belief.” It was a reality. Between November 5 and November 29, 2021, BHHM leaders spent days researching and analyzing the language of the Rule and trying to understand their compliance obligations. They spent hours consulting CMS resources and legal counsel to develop a vaccine policy and an exemption application and review process. They worked continually to allay growing fears among staff who heard reports of a looming statewide crisis and closings in the nursing home industry. They investigated reports of possible legal challenges, and debated what BHHM would do, as a matter of conscience, if there were no injunction.

2. CMS Mandate “Commandeers” BHHM Ministry Employment Decisions.

In an update memo to his Board, the President of BHHM reported as follows:

As of November 21, 2021 (the final day to have the first dose of the vaccine and be allowed to work without interruption), 69 BHHM employees had not been vaccinated. Two qualified for medical exemptions while 13 employees proceeded to be vaccinated. Two employees submitted resignations and two walked off the job. Religious exemptions were provided for 40 employees, while 12 remain undecided. Those who do not receive an exemption or the first dose of a qualifying vaccine before 12/5/2021 will be terminated, barring a federal stay of the CMS healthcare mandate.

BHHM leadership strongly urged staff to be vaccinated. They were **pro-vaccine**. But BHHM leaders were **anti-mandate**, as a matter of Christian conscience. BHHM leaders could not, with a clear conscience, allow government to “commandeer” the BHHM leadership to compel them to act as agents of law enforcement with respect to employment decisions over ministry staff.

BHHM leaders could not, in good conscience, tell its ministry staff to “take the job or lose your job.” Because these were not just “jobs.” These are servants of the Lord, serving the Lord’s people in very hard places. And BHHM leaders, with the spiritual responsibility for calling and leading these servants of Christian

healthcare, could not surrender control to government agents or politicians.

BHHM leaders believe they must submit respectfully to lawful authority, but they also hold deeply religious convictions that government has no right to dictate ministerial decisions, especially the hiring, firing or discipline of staff members performing critical ministry functions.

3. CMS Mandate Allows no Exemptions for BHHM or Other Religious Ministries.

As BHHM leaders understood the CMS Mandate, some employees would be eligible for “reasonable accommodations.” But the Mandate makes no “reasonable accommodation” for religious organizations. The religious ministry is compelled to participate and implement the Mandate, and to enforce it in the ministry, no matter what religious scruples the ministry might hold about a God-called, spiritually qualified team of Christian healthcare servants. The Mandate compels religious institutions to incur significant costs and divert precious resources away from their religious purposes of preaching the Gospel and providing Christ-like care to the aged and infirm. The Mandate abuses executive power as it violates constitutional rights.

4. The Mandate Forces BHHM to Choose Between Autonomy or Serving Saints who Depend on Medicare or Medicaid.

BHHM leaders realized they would have to draw the line of conscience, because they cannot allow the federal government to commandeer their ministries, or usurp their responsibilities of spiritual leadership over their ministry staff. Yet BHHM has spiritual and legal duties as caregivers to the residents who depend on Medicare and Medicaid to finance their care. The conflict of conscience for BHHM is real, and is repeated for like-minded ministries across the country.

III. The CMS Mandate Violates RFRA.

A. The Mandate Substantially Burdens Religious Ministries' Beliefs.

RFRA prohibits the government from substantially burdening a Ministry's exercise of religion without showing that the government action furthers a compelling interest by the least restrictive means. 42 U.S.C. § 2000bb-1(a)-(b). "Congress enacted RFRA . . . to provide very broad protection for religious liberty." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014). Those protections cover for-profit and non-profit entities and go "far beyond what [the Supreme Court] ha[d] held [was] constitutionally required." *Id.* at 706. The Mandate creates a substantial burden on the exercise of religion by BHHM and other similar ministries. CMS cannot clear the high bar of "strict scrutiny" to justify that burden.

CMS's rule here burdens religious exercise. The government substantially burdens a person's exercise of religion if it "demands that [he] engage in conduct

that seriously violates his religious beliefs” with the threat of “economic consequences.” *Id.* at 720. See also *Thomas v. Review Board of Ind. Emp. Sec. Div.*, 450 U.S. 707, 717-18 (1981) (“burden on religion exists” if the government “put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.”).

Because CMS’s rule requires that religious ministries comply with enforcing the mandate on their workplace or face substantial consequences, it substantially burdens exercise. *Hobby Lobby*, 573 U.S. at 720. Although BHHM does not categorically oppose vaccines, its Christian faith requires honor and respect toward employees who cannot violate religious conscience. BHHM’s faith prevents it from burdening the unvaccinated employee’s religious conscience for refusing to receive the vaccine in this way. *Hobby Lobby*, 573 U.S. at 691 (desire not to be complicit in providing contraception constituted sincerely held religious belief); *Little Sisters of the Poor v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) (noting that “the contraceptive mandate violated RFRA as applied to entities with complicity-based objections”); *Sambrano v. United Airlines, Inc.*, No. 21-11159, 2021 WL 5881819 at *2 (5th Cir. Dec. 13, 2021) (Ho, J., dissenting) (“Forcing individuals to choose between their faith and their livelihood imposes an obvious and substantial burden on religion.”).

B. The Mandate Fails Under Compelling Interest/Narrow Tailoring.

CMS cannot show a compelling interest or that the Mandate is narrowly tailored using the least restrictive means. When the “vast majority” of individuals engaging in similar conduct are exempted, narrow tailoring “falters.” *Dahl v. W. Mich. Univ.*, 15 F.4th 728, 735 (6th Cir. 2021)

Moreover, CMS should not receive any unusual “benefit of the doubt” at this point. Last year, the Court cautioned that “even in a pandemic, the Constitution cannot be put away and forgotten.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020). Government invocation of “crisis” and “emergency” must be held to constitutional limits. This is such a case.

IV. Religious Ministries Hold Biblical Convictions About Autonomy to Call and Employ Ministers.

The Southern Baptist Convention’s doctrinal statement, *Baptist Faith & Message*, 2000, (“BFM”)⁹ in Article 15, on the Christian and the Social Order, says:

All Christians are under obligation to seek to make the will of Christ supreme in our own lives and in human society. Means and methods used for the improvement of society and the establishment of righteousness among men can be truly and permanently helpful only when they are rooted in the regeneration

⁹ The full text of the *Baptist Faith & Message*, 2000, is available at <https://bfm.sbc.net/>; last accessed 08/09/2021.

of the individual by the saving grace of God in Jesus Christ. In the spirit of Christ, Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including adultery, homosexuality, and pornography. We should work to provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick. We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. Every Christian should seek to bring industry, government, and society as a whole under the sway of the principles of righteousness, truth, and brotherly love. In order to promote these ends Christians should be ready to work with all men of good will in any good cause, always being careful to act in the spirit of love without compromising their loyalty to Christ and His truth.

BFM, Article 17, on Religious Liberty, says, in part:

God alone is Lord of the conscience, and He has left it free from the doctrines and commandments of men which are contrary to His Word or not contained in it. Church and state should be separate. **The state owes to every church protection and full freedom in the pursuit of its spiritual ends.** In providing for such freedom no ecclesiastical group or denomination should be favored by the state more than others. Civil government being ordained of God, it is the duty of Christians to render loyal obedience thereto in all things not contrary to the revealed will of God. The

church should not resort to the civil power to carry on its work. The gospel of Christ contemplates spiritual means alone for the pursuit of its ends. **The state has no right to impose penalties for religious opinions of any kind.** The state has no right to impose taxes for the support of any form of religion. **A free church in a free state is the Christian ideal,** and this implies the right of free and unhindered access to God on the part of all men, **and the right to form and propagate opinions in the sphere of religion without interference by the civil power.** (emphasis added)

As demonstrated above, the CMS Mandate interferes with BHHM's ability to implement the statement of faith with autonomy concerning the religious and spiritual qualifications of its staff.

V. The Injunction Serves the Public Interest by Protecting First Amendment Rights.

“[I]t is always in the public interest to prevent the violation of a party's constitutional rights.” *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (quotations omitted). This is particularly true for First Amendment freedoms. Because the current injunction will accomplish this, the requested stay of the injunction should be denied.



CONCLUSION

For these reasons, the federal government's application for a stay of the trial court preliminary injunction should be denied.

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