

No. 21-30734

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

STATE OF LOUISIANA, et al.,

Plaintiffs-Appellees,

v.

XAVIER BECERRA, et al.,

Defendants-Appellants.

**DEFENDANTS-APPELLANTS' OPPOSITION TO
PLAINTIFFS' EXPEDITION MOTION**

CERTIFICATE OF INTERESTED PERSONS

No. 21-30734

STATE OF LOUISIANA, ET AL.,

Plaintiffs-Appellees,

V.

XAVIER BECERRA, SECRETARY,

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,

Defendants-Appellants.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Plaintiffs-appellees:

States of Louisiana, Montana, Arizona, Alabama, Georgia, Idaho, Indiana, Mississippi, Ohio, Oklahoma, South Carolina, Utah, West Virginia, and the Commonwealth of Kentucky. The proposed amended complaint would add as plaintiffs the State of Tennessee and the Commonwealth of Virginia.

Defendants-appellants:

Xavier Becerra, Secretary, U.S. Department of Health & Human Services; U.S. Department of Health & Human Services; Chiquita Brooks-Lasure; Centers for Medicare & Medicaid Services

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s/ Alisa B. Klein

Alisa B. Klein
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On January 13, 2022, after hearing oral argument, the Supreme Court issued a detailed, reasoned decision in this case. *See Biden v. Missouri*, 142 S. Ct. 647 (2022). In that decision, the Supreme Court granted the federal government's applications to stay the preliminary injunction at issue here and a materially identical preliminary injunction issued by a district court in the Eastern District of Missouri.

On January 31, 2022, the federal government filed its opening brief in this appeal. The federal government explained that the Supreme Court's decision resolved the merits of the challenges to the vaccination rule at issue here, and argued that the preliminary injunction should be vacated on that ground.

Thirty days later, on March 2, 2022, plaintiffs filed their responsive brief. Plaintiffs argued that the Supreme Court's decision is merely preliminary and leaves room for the district court to again enjoin the challenged rule based on ostensibly changed circumstances and additional legal theories or supplemented claims. The federal government strongly disagrees: as our reply brief will explain, a remand on those terms would thwart the will of the Supreme Court.

For present purposes, there is no basis to order the federal government to file its reply brief by noon tomorrow (3/9), *see* Pl. Mot. xiii, rather than on Monday (3/14) – 8 days ahead of the deadline – as the federal government already intends to do, *see* Pl. Mot. vi. The asserted basis for plaintiffs’ “emergency” motion is that notices of non-compliance were issued on February 11 (nearly a month ago) to three facilities that are located in and operated by the State of Tennessee, which is not a party to this case. If Tennessee believed that it had a basis to seek judicial relief, it could have done so in a court within the Sixth Circuit. Similarly, if the affected facilities (also non-parties) have not since taken corrective action and believe that there is ground to challenge the determinations, they can pursue their administrative and judicial remedies. *See* 42 C.F.R. Part 431, subpart D, and 42 C.F.R. Part 483. Nothing in plaintiffs’ motion or exhibits provides reason to expedite this case.

CONCLUSION

Plaintiffs' expedition motion should be denied.

Respectfully submitted,

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s/ Alisa B. Klein

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March 2022

CERTIFICATE OF COMPLIANCE

This response complies with the type-volume limit of Federal Rule of Appellate Procedure 27 because it contains 362 words. This response also complies with the typeface and type-style requirements because it was prepared using Microsoft Word 2016 in Book Antiqua 14-point font, a proportionally spaced typeface.

s/ Alisa B. Klein

Alisa B. Klein

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2022, I electronically filed the foregoing response with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Alisa B. Klein

Alisa B. Klein