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July 1, 2022

VIA CM/ECF

Mr. Michael Gans
Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Federal Courthouse
111 South 10th Street, Room 24.329
St. Louis, MO 63102

RE: *State of Missouri et al. v. Biden et al.*, No. 22-1104
Supplemental Authority under Rule 28(j)

Dear Mr. Gans:

After the States submitted their brief in this case, the U.S. Supreme Court issued *West Virginia v. Environmental Protection Agency*, 2022 WL 2347278 (U.S. June 30, 2022). The Supreme Court applied the major-questions doctrine to conclude that EPA’s authority to use the “best system of emission reduction” to set emissions standards, 42 U.S.C. § 7411(a)(1), did not permit the agency to “restructure[] the Nation’s overall mix of electricity generation” by setting emission standards that would force power plants to use wind and solar power instead of coal and natural gas. *See id.* at *7, *11, *13. Its reasoning applies here. *See also* Br. Appellees 44–45:

First, the Government’s unprecedented claim that the Procurement Act authorizes the Contractor Mandate effects “a fundamental revision of the statute, changing it from one sort of scheme of regulation”—involving federal contracting—“into an entirely different kind”—involving public health. *West Virginia*, 2022 WL

2347278, at *15 (quotations and alterations omitted); *see also id.* at *22–*23 (Gorsuch, J., concurring).

Second, it is “highly unlikely that Congress would leave” to the Executive’s “discretion the decision” that a fifth of the nation’s workforce must receive a COVID-19 vaccine; “[t]he basic and consequential tradeoffs involved in such a choice are ones that Congress would likely have intended for itself.” *Id.* at *16 (quotations and citations omitted); *see also id.* at *22–*23 (Gorsuch, J., concurring). That is especially true since Congress has spoken on the issue of federal vaccine policy. *See id.* *16; Br. Appellees 34 (so noting).

Third, the Contractor Mandate “intrudes into an area that is the particular domain of state law.” *West Virginia*, 2022 WL 2347278, at *23 (Gorsuch, J., concurring) (quotations omitted); *see* Br. Appellees 45–47 (discussing the related federalism canon).

Thus, this case is “a major questions case.” *West Virginia*, 2022 WL 2347278, at *13. Because the Procurement Act does not clearly authorize the Contractor Mandate, it is unlawful. *See id.* at *17–*18; *id.* at *24–*25 (Gorsuch, J., concurring) (noting four “clues” that show whether there is the necessary clear statement).

Sincerely,

/s/ James A. Campbell

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cc: Counsel for Appellants (via electronic filing)

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2022, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit using the CM/ECF system, which serve all counsel of record.

/s/ D. John Sauer

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the body of this letter contains 343 words as determined by the word-count feature of Microsoft Word. This letter has been scanned for viruses and is virus-free.

/s/ D. John Sauer