

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

THE STATE OF TENNESSEE; THE)
STATE OF INDIANA; THE STATE OF)
ALABAMA; THE STATE OF ALASKA;)
THE STATE OF ARIZONA; THE STATE)
OF ARKANSAS; THE STATE OF)
GEORGIA; THE STATE OF KANSAS;)
THE COMMONWEALTH OF)
KENTUCKY; THE STATE OF)
LOUISIANA; THE STATE OF)
MISSISSIPPI; THE STATE OF)
MISSOURI; THE STATE OF MONTANA;)
THE STATE OF NEBRASKA; THE)
STATE OF OHIO; THE STATE OF)
OKLAHOMA; THE STATE OF SOUTH)
CAROLINA; THE STATE OF SOUTH)
DAKOTA; THE STATE OF TEXAS; THE)
STATE OF UTAH; THE)
COMMONWEALTH OF VIRGINIA; THE)
STATE OF WEST VIRGINIA,)

Case No. 3:22-cv-00257

Plaintiffs,)

v.)

UNITED STATES DEPARTMENT OF)
AGRICULTURE; THOMAS VILSACK, in)
his official capacity as Secretary of)
Agriculture; CINDY LONG, in her official)
capacity as Administrator of Food and)
Nutrition Service at the United States)
Department of Agriculture; ROBERTO)
CONTRERAS, in his official capacity as)
Director of the Food and Nutrition Service)
Civil Rights Division at the United States)
Department of Agriculture,)

Defendants.)

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs are the States of Tennessee, Indiana, Alabama, Alaska, Arkansas, Arizona, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and West Virginia. The States move under Federal Rule of Civil Procedure 65(a) and 5 U.S.C. § 705 for an order preliminarily enjoining the U.S. Department of Agriculture (“USDA”), the Secretary of Agriculture, the Administrator of the USDA Food and Nutrition Service, the Director of the Food and Nutrition Service Civil Rights Division, their officers, agents, servants, employees, attorneys, and any other persons who are in active concert or participation with those individuals from enforcing the following documents against Plaintiff States and entities within those States:

- The USDA’s reinterpretation of Title IX. USDA, CRD 01-2022, Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update (May 5, 2022), <https://bit.ly/3NuXnSx> (“Memorandum”).
- The cover letter for the Memorandum issued by the USDA’s Food and Nutrition Service. USDA, Cover Letter to CRD 01-2022, Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update (May 5, 2022) (“Cover Letter”).
- The Memorandum’s “questions and answers” document issued by the USDA’s Food and Nutrition Service. USDA, CRD 02-2022, Questions and Answers Related to CRD 01-2022 Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update (May 5, 2022), <https://bit.ly/3yzKpyG> (“Memorandum Q&A”).
- The additional guidance on the publication of documents and notices related to the USDA’s reinterpretation of Title IX issued by the Department’s Food and Nutrition Service. USDA, Memorandum Regarding Revised Nondiscrimination Statement and “And Justice for All” Posters; Timelines and Guidance for Implementation (May 5, 2022) (“Supplemental Memorandum”) (collectively with Memorandum, Cover Letter, and Memorandum Q&A, “Memoranda”).
- The USDA’s adoption of its new nondiscrimination policy to be adopted in Supplemental Nutrition Assistance Program (“SNAP”) Federal-State Agreements. Supplemental Nutrition Assistance Program: Civil Rights Update to the Federal-State Agreement, 87 Fed. Reg. 35,855 (June 14, 2022), <https://bit.ly/3bDC4RA> (“Final Rule”).

As explained in the States’ accompanying memorandum, the States are likely to succeed on their claims alleging that the USDA’s Memoranda and Final Rule violate the Administrative Procedure Act (“APA”), 5 U.S.C. § 706. The Memoranda and Final Rule violate the APA’s notice-and-comment requirements; are arbitrary and capricious; conflict with Title IX; conflict with the Food and Nutrition Act; and violate the Spending Clause, the First Amendment, the Tenth Amendment, nondelegation doctrine, and separation-of-powers principles. Preliminary relief is necessary to prevent substantial irreparable harms—harms that include forcing States to choose between their sovereignty in enacting and enforcing their laws on the one hand and substantial federal funding on the other. Preliminary relief will serve the public interest by maintaining the status quo and preventing the unlawful new rules from disrupting SNAP programs, State-run schools, and other State agencies. *See Tennessee v. Dept. of Education*, No. 3:21-CV-308, 2022 WL 2791450 (E.D. Tenn. July 15, 2022).

Because the Memoranda and Final Rule imminently threaten federal funding for the States, the States request expedited briefing. The USDA, for example, requires Tennessee to adopt the new policy by August 15, 2022, or risk losing over \$6 million in SNAP Nutrition Educational Program funding for the next fiscal year. *See Niknejad Decl.* ¶¶ 10-12 (attached as Exhibit A). Accordingly, the States propose the following schedule so that this Court can rule on the States’ motion before the USDA’s August 15 deadline:

- **August 2, 2022:** Defendants file Response in Opposition to States’ Motion for Preliminary Injunction.
- **August 5, 2022:** States file Reply in Support of States’ Motion for Preliminary Injunction.

The States further request that this Court hear oral argument on the motion. Argument is warranted because this motion raises significant questions of statutory interpretation and constitutional law, and it implicates the interests of States, educational institutions, and others across the country. The States are available for oral argument during the week of **August 8, 2022**.

Finally, the States request that this Court exercise its discretion to waive the security requirement of Federal Rule of Civil Procedure 65(c).

Dated: July 26, 2022

Respectfully Submitted,

/s/ Brandon J. Smith (BPR # 037272)

HERBERT H. SLATERY III

*Attorney General and Reporter of
Tennessee*

ANDRÉE S. BLUMSTEIN

Solicitor General

CLARK L. HILDABRAND

BRANDON J. SMITH

Assistant Solicitors General

J. MATTHEW RICE*

Special Assistant to the Solicitor General

TRAVIS J. ROYER

*Office of the Solicitor General Honors
Fellow*

Office of the Tennessee Attorney General
and Reporter

P.O. Box 20207

Nashville, TN 37202

(615) 532-4081

Brandon.Smith@ag.tn.gov

Counsel for State of Tennessee

/s/ Melinda Holmes

THEODORE E. ROKITA

Attorney General of Indiana

THOMAS M. FISHER*

Solicitor General

MELINDA HOLMES*

Deputy Attorney General

Office of the Indiana Attorney General

IGC-South, Fifth Floor

302 West Washington St.

Indianapolis, IN 46204

(317) 232-6255

Melinda.Holmes@atg.in.gov

Counsel for State of Indiana

/s/ Edmond G. LaCour Jr.
STEVE MARSHALL
Attorney General of Alabama
EDMUND G. LACOUR JR.*
Solicitor General
Office of the Attorney General
State of Alabama
501 Washington Ave.
Montgomery, AL 36130
(334) 242-7300
Edmund.LaCour@AlabamaAG.gov
Counsel for State of Alabama

/s/ Charles E. Brasington
TREG R. TAYLOR
Attorney General of Alaska
CHARLES E. BRASINGTON*
JUSTIN NELSON*
Assistant Attorneys General
State of Alaska
P.O. Box 110300
Juneau, AK 99811
(907) 465-3600
Charles.Brasington@alaska.gov
Counsel for State of Alaska

/s/ Kate B. Sawyer
MARK BRNOVICH
Attorney General of Arizona
KATE B. SAWYER*
Assistant Solicitor General
Office of the Arizona Attorney General
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-3333
Kate.Sawyer@azag.gov
Counsel for State of Arizona

/s/ Nicholas J. Bronni
LESLIE RUTLEDGE
Attorney General of Arkansas
NICHOLAS J. BRONNI*
Solicitor General
Office of the Arkansas Attorney General
323 Center St., Suite 200
Little Rock, AR 72201
(501) 682-6307
nicholas.bronni@arkansasag.gov
Counsel for State of Arkansas

/s/ Drew Waldbeser
CHRISTOPHER M. CARR
Attorney General of Georgia
STEPHEN J. PETRANY*
Solicitor General
DREW WALDBESER*
Deputy Solicitor General
Office of the Georgia Attorney General
40 Capitol Square, S.W.
Atlanta, GA 30334
(404) 458-3378
dwaldbeser@law.ga.gov
Counsel for State of Georgia

/s/ Kurtis K. Wiard
DEREK SCHMIDT
Attorney General of Kansas
KURTIS K. WIARD*
Assistant Solicitor General
Office of the Kansas Attorney General
120 S.W. 10th Ave.
Topeka, KS 66612
(785) 296-2215
kurtis.wiard@ag.ks.gov
Counsel for State of Kansas

/s/ Marc Manley
DANIEL CAMERON
Attorney General of Kentucky
MARC MANLEY*
Assistant Attorney General
Office of the Kentucky Attorney General
700 Capital Ave., Suite 118
Frankfort, KY 40601
(502) 696-5300
Marc.Manley@ky.gov
Counsel for Commonwealth of Kentucky

/s/ D. John Sauer
ERIC S. SCHMITT
Attorney General of Missouri
D. JOHN SAUER*
Solicitor General
Office of the Missouri Attorney General
P.O. Box 899
Jefferson City, MO 65102
(573) 751-8870
John.Sauer@ago.mo.gov
Counsel for the State of Missouri

/s/ Elizabeth B. Murrill
JEFF LANDRY
Attorney General of Louisiana
ELIZABETH B. MURRILL*
Solicitor General
J. SCOTT ST. JOHN*
Deputy Solicitor General
Louisiana Department of Justice
1885 N. Third St.
Baton Rouge, LA 70804
(225) 326-6766
emurrill@ag.louisiana.gov
stjohnj@ag.louisiana.gov
Counsel for State of Louisiana

/s/ Christian B. Corrigan
AUSTIN KNUDSEN
Attorney General of Montana
DAVIS M.S. DEWHIRST*
Solicitor General
CHRISTIAN B. CORRIGAN*
Deputy Solicitor General
Office of the Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620
(406) 444-2707
Christian.Corrigan@mt.gov
Counsel for State of Montana

/s/ Justin L. Matheny
LYNN FITCH
Attorney General of Mississippi
JUSTIN L. MATHENY*
Deputy Solicitor General
State of Mississippi
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205
(601) 359-3680
justin.matheny@ago.ms.gov
Counsel for State of Mississippi

/s/ James A. Campbell
DOUGLAS J. PETERSON
Attorney General of Nebraska
JAMES A. CAMPBELL*
Solicitor General
Office of the Nebraska Attorney General
2115 State Capitol
Lincoln, NE 68509
(402) 471-2682
Jim.Campbell@nebraska.gov
Counsel for State of Nebraska

/s/ Sylvia May Mailman

DAVE YOST

Attorney General of Ohio

SYLVIA MAY MAILMAN*

Assistant Solicitor General

Office of the Ohio Attorney General

615 W. Superior Ave., 11th Floor

Cleveland, OH 44113

(614) 282-3594

May.Mailman@OhioAGO.gov

Counsel for State of Ohio

/s/ Paul Swedlund

JASON R. RAVNSBORG

Attorney General of South Dakota

Office of the South Dakota Attorney General

PAUL SWEDLUND*

Assistant Attorney General

1302 East Highway 14, Suite 1

Pierre, SD 57501

(605) 773-3215

Jason.Ravnsborg@state.sd.us

Counsel for State of South Dakota

/s/ Bryan Cleveland

JOHN M. O'CONNOR

Attorney General of Oklahoma

BRYAN CLEVELAND*

Deputy Solicitor General

Oklahoma Office of the Attorney General

313 N.E. 21st Street

Oklahoma City, OK 73105-4894

(405) 521-3921

Bryan.Cleveland@oag.ok.gov

Counsel for the State of Oklahoma

/s/ Aaron Rietz

KEN PAXTON

Attorney General of Texas

AARON RIETZ*

Deputy Attorney General

Office of the Attorney General of Texas

P.O Box 12548

Austin, TX 78711-2548

(512) 936-1989

Aaron.Rietz@oag.texas.gov

Counsel for State of Texas

/s/ J. Emory Smith Jr.

ALAN WILSON

Attorney General of South Carolina

J. EMORY SMITH, JR.*

Deputy Solicitor General

Office of the South Carolina Attorney

General

P.O. Box 11549

Columbia, SC 29211

(803) 734-3680

esmith@scag.gov

Counsel for State of South Carolina

/s/ Melissa A. Holyoak

SEAN D. REYES

Attorney General of Utah

MELISSA A. HOLYOAK*

Solicitor General

Office of the Utah Attorney General

350 N. State Street, Suite 230

Salt Lake City, UT 84114

(801) 366-0260

melissaholyoak@agutah.gov

Counsel for State of Utah

/s/ Andrew N. Ferguson

JASON S. MIYARES

Attorney General of Virginia

ANDREW N FERGUSON*

Solicitor General

LUCAS W.E. CROSLow*

Deputy Solicitor General

Office of the Attorney General of Virginia

Richmond, VA 23219

(814) 786-7704

AFerguson@oag.state.va.us

LCroslow@oag.state.va.us

Counsel for the Commonwealth of Virginia

/s/ Lindsay S. See

PATRICK MORRISEY

Attorney General of West Virginia

LINDSAY S. SEE*

Solicitor General

Office of the West Virginia Attorney General

State Capitol Bldg. 1, Room E-26

Charleston, WV 25305

(681) 313-4550

Lindsay.S.See@wvago.gov

Counsel for the State of West Virginia

***Application for Pro Hac Admission Forthcoming**

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2022, a true and exact copy of the foregoing document was forward, by certified mail, to the parties identified below:

U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

The Honorable Tom Vilsack
Secretary of the U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Administrator Cindy Long
Food and Nutrition Services
U.S. Department of Agriculture
Braddock Metro Center II
1320 Braddock Place
Alexandria, VA 22314

Director Roberto Contreras
Civil Rights Division, Food and Nutrition Service
U.S. Department of Agriculture
Braddock Metro Center II
1320 Braddock Place
Alexandria, VA 22314

/s/ Brandon J. Smith
BRANDON J. SMITH
Assistant Solicitor General