

No. 21-3725

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STATE OF MISSOURI, *ET AL.*,

*Plaintiffs-Appellees,*

v.

JOSEPH R. BIDEN, JR., *ET AL.*,

*Defendants-Appellants.*

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On Appeal from the U.S. District Court for the  
Eastern District of Missouri (4:21-cv

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ECHOCARDIOGRAPHY, AMERICAN  
HEMATOLOGY, AMERICAN THORACIC  
AMERICAN LUNG ASSOCIATION AS

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## ***AMICI CURIAE***

Pursuant to Federal Rule of Appellate Procedure 29, Proposed *Amici* move for leave to file the attached brief in support of Defendants-Appellants' emergency motion for stay pending appeal.

Proposed *Amici* include membership organizations of physicians and an organization representing patients:

The American College of Physicians is the largest medical specialty organization in the U.S. Its membership includes 161,000 internal medicine physicians, related subspecialists, and medical students. Internists apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness. ACP and its physician members lead the profession in education, standard-setting, and the sharing of knowledge to advance the science and practice of internal medicine.

Founded in 1947, the American Academy of Family Physicians is one of the largest national medical organizations, representing 133,500 family physicians and medical students nationwide. AAFP seeks to improve the health of patients, families, and communities by advocating

for the health of the public and by supporting its members in providing continuous comprehensive health care to all.

The American Academy of Pediatrics was founded in 1930 and is a national, non-for-profit professional organization dedicated to furthering the interests of child and adolescent health. The AAP's membership includes over 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists. Over the past year-and-a-half



interprofessional teams, eliciting personal care goals, and treating older people as whole persons. AGS advocates for policies and programs that support the health, independence, and quality of life of all of us as we age. AGS has a strong interest in policies to prevent and mitigate COVID-19 infection as an important public health intervention for the health and safety of our nation—but most critically for our vulnerable populations.

The American Medical Women’s Association is the oldest multispecialty organization dedicated to advancing women in medicine and improving women’s health. With a mission to advance women in medicine, advocate for equity, and ensure excellence in health care, AMWA envisions a healthier world where women physicians achieve equity in the medical profession and realize their full potential and where patients receive unbiased care.

The American Society for Clinical Pathology is a 501(c)(3) non-profit medical specialty society representing more than 100,000 members. ASCP is one of the nation’s largest medical specialty societies and the world’s largest organization representing the field of laboratory medicine and pathology. ASCP membership is uniquely diverse,

consisting broadly of board-

The American Society of Hematology is the world's largest professional society of hematologists, including approximately 18,000 clinicians and researchers, who are dedicated to furthering the understanding, diagnosis, treatment, and prevention of disorders affecting the blood. ASH believes that vaccinations offer the best protection against contracting COVID-19, prevent severe illness and hospitalization, and will help save lives.

The American Thoracic Society is an international, nonprofit, nonpartisan organization with more than 15,000 physicians, scientists, nurses, and respiratory therapists dedicated to improving the health and well-being of patients suffering from chronic respiratory diseases.



The American Lung Association is the nation's oldest voluntary health organization committed to a world free of lung disease. SARS-COV-2 (COVID-19) is a respiratory disease that has a dramatic impact on people with lung diseases including lung cancer and chronic obstructive pulmonary disease. The American Lung Association strongly supports vaccinations and has created public education and information to increase access and overcome vaccine hesitancy. The Lung Association has also invested significant resources in research, education and public policy advocacy regarding the adverse health effects caused by COVID-19.

Proposed *Amici*





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I hereby certify that on December 7, 2021, a true and accurate copy of the foregoing motion was electronically filed with the Court using the CM/ECF system. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

/s/ Rachel L. Fried

Date: December 7, 2021

No. 21-3725

*ET AL.,*

*Defendants-Appellants.*

On Appeal from the U.S. District Court for the  
Eastern District of Missouri (4:21-cv-01329-MTS)

***AMICI CURIAE***

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The American College of Physicians is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the American College of Physicians.

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The American Academy of Pediatrics is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the American Academy of Pediatrics.

The American College of Chest Physicians is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the American College of



The American Geriatrics Society is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the American Geriatrics Society.

The American Medical Women's Association is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the American Medical Women's Association.

The American Society for Clinical Pathology is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the American Society for Clinical Pathology.

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The American Lung Association is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the American Lung Association.

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***AMICI CURIAE***

As set forth in the accompanying motion for leave to file,



against the Centers for Medicare & Medicaid Services' interim final rule

the acute phase of infection. A systematic review of forty-five studies found that 73% of infected individuals experienced at least one long-term symptom.<sup>6</sup>

SARS-CoV-2 is highly transmissible. The original strain was more contagious than the flu, and the Delta variant of SARS-CoV-2, now the leading strain, is more than twice as contagious as the original.<sup>7</sup> Crucially, over 50% of the spread of the virus may be from individuals who have no symptoms at the time of transmission.<sup>8</sup>

Transmission in healthcare facilities has been a major factor in the spread of COVID-19. Since the beginning of the COVID-19 outbreak in February 2020, COVID-19 has ravaged nursing homes, long-term care facilities, and hospitals.<sup>9</sup> A study found that “[u]p to 1 in 6 SARS-CoV-2

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<sup>6</sup> Tahmina Nasserie et al., *Assessment of the Frequency and Variety of Persistent Symptoms: A Systematic Review*, JAMA Netw. Open, May 26, 2021, <https://bit.ly/3qocFkk>.

<sup>7</sup> *Delta Variant: What We Know About the Science*, CDC (Aug. 26, 2021), <https://bit.ly/3plAmcy>; Apoorva Mandavilli, *C.D.C. Internal Report Calls Delta Variant as Contagious as Chickenpox*, N.Y. Times (Jul. 30, 2021), <https://nyti.ms/3EtJXTb>.

<sup>8</sup> *Use of Cloth Masks to Control the Spread of SARS-CoV-2*, CDC (May 7, 2021), <https://bit.ly/30inWYx>.

<sup>9</sup> See, e.g., Karen Shen et al., *Estimates of COVID-19 Cases and Deaths*

infections among hospitalised patients with COVID-19 in England during the first 6 months of the pandemic could be attributed to [healthcare-associated] transmission.”<sup>10</sup> Another study found that frontline healthcare workers had a three-fold risk of contracting SARS-CoV-2 compared to the general population.<sup>11</sup> And healthcare facilities are still loci of outbreaks of the Delta variant. Outbreaks in Iowa nursing

COVID-19 vaccines are safe. Before FDA authorized/approved and CDC recommended use of the COVID-19 vaccines in the population, scientists conducted extensive clinical trials. FDA, CDC, and their advisory committees conducted rigorous reviews of the data, and continue to monitor the vaccines' safety.<sup>13</sup> A study of over six

Pfizer, Moderna, and J&J/Janssen vaccines are 91.3%, 90%, and 72% effective against infection, respectively.<sup>16</sup> A study of vaccine effectiveness between December 14, 2020 and August 14, 2021 found that vaccines were 80% effective at preventing SARS-CoV-2 infection among frontline workers.<sup>17</sup> Although the vaccines' efficacy wanes over time, initial data on Pfizer booster shots show that they may boost the vaccine efficacy to over 95%.<sup>18</sup> For comparison, the flu vaccination reduces the risk of flu illness by between forty and sixty percent.<sup>19</sup>

Second, each of the three vaccines is even more effective against serious illness and death. Studies have estimated the Pfizer, Moderna, and J&J/Janssen vaccines as 95.3–97%, 95%, and 86% effective against severe disease, respectively.<sup>20</sup> The vaccines are likewise highly effective

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<sup>16</sup> Kathy Katella, *Comparing the COVID-19 Vaccines: How Are They Different?*, Yale Med. (Nov. 19, 2021), <https://bit.ly/307jEU5>.

<sup>17</sup> Ashley Fowlkes et al., *Effectiveness of COVID-19 Vaccines in Preventing SARS-CoV-2 Infection Among Frontline Workers Before and During B.1.617.2 (Delta) Variant Predominance — Eight U.S. Locations, December 2020–August 2021*, 70 Morbidity & Mortality Weekly Rep. 1167 (2021), <https://bit.ly/3px2OGB>.

<sup>18</sup> *Pfizer and BioNTech Announce Phase 3 Trial Data Showing High Efficacy of a Booster Dose of Their COVID-19 Vaccine*, Pfizer (Oct. 21, 2021), <https://bit.ly/3EXQa9K>.

<sup>19</sup> *How Well Flu Vaccines Work: Questions & Answers*, CDC (last visited Nov. 9, 2021), <https://bit.ly/3HifLMP>.

<sup>20</sup> Katella, *supra* n. 16.





19.”<sup>27</sup> This is particularly important for people who cannot get vaccinated due to age or medical condition, as well as immunocompromised people, who remain particularly susceptible to infection even after vaccination<sup>28</sup>—and who may be particularly likely to encounter workers in healthcare facilities, where social distancing is not an option.

Widespread vaccination also protects against overwhelming healthcare systems with COVID-19 patients. “COVID-19 surges [a]re associated with higher rates of in-hospital mortality among patients *without* COVID-19, suggesting disruptions in care patterns for patients with many common acute and chronic illnesses.”<sup>29</sup> For example, during the pandemic, an antiques dealer in Alabama died from a cardiac event after dozens of intensive care units in three states turned him down for lack of space.<sup>30</sup> One Idaho hospital canceled elective procedures and

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<sup>27</sup> Carlos del Rio et al., *Confronting the Delta Variant of SARS-CoV-2, Summer 2021*, 326 JAMA 1001, 1002 (2021), <https://bit.ly/3bVL5Cj>.

<sup>28</sup> Katherine Lontok, *How Effective Are COVID-19 Vaccines in Immunocompromised People?*, Am. Soc’y for Microbiology (Aug. 12, 2021), <https://bit.ly/3F24HBh>.

<sup>29</sup> See Amber K. Sabbatini, et al., *Excess Mortality Among Patients Hospitalized During the COVID-19 Pandemic*, 16 J. Hosp. Med. 596, 596 (2021), <https://bit.ly/3Hs5EEU>.

<sup>30</sup> Tim Stelloh, *Alabama heart patient dies after hospital contacts 43 ICUs in 3 states, family says*, NBC News (Sept. 12, 2021), <https://nbcnews.to/3nyOz4t>.



postponed necessary procedures, including excising brain tumors.<sup>31</sup>

Although the district court concluded that the CMS rule “will have a crippling effect” on healthcare facilities by creating a shortage of services, Op. at 29-30, the court did



level of protection against COVID-19 as does vaccination. Although face masks can be highly effective at limiting the transmission of SARS-CoV-

of shared spaces is staggered or reduced, or where staff are in physical proximity to each other only rarely.<sup>39</sup> And because staff who do not interact with patients can transmit the virus to those who do, a rule that applied only to staff members with patient contact would be insufficiently protective. Immediate, widespread vaccination against COVID-19 is the surest way to protect healthcare facility staff, patients, and the public, and to end this costly pandemic.

For the reasons stated above and in Defendants-Appellants' filings, *Amici* urge this Court to grant Defendants-Appellants' emergency motion for stay pending appeal.

Respectfully submitted,

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<sup>39</sup> Indeed, the World Health Organization considers remote workers at “lower risk[,]” not no risk, of infection. *Preventing and mitigating COVID-19 at work*, at 2, World Health Organization (May 19, 2021), <https://bit.ly/3wMJ451>.

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