

## MEMORANDUM

**TO:** Interested Parties

**FROM:** Protect Our Care's Coronavirus War Room

**DATE:** January 5, 2022

**RE: Background Material on Supreme Court Oral Arguments on Federal Vaccine Requirements**

While the world is grappling with a new Covid-19 variant, and every reputable public health official is urging that Americans get vaccinated and receive a booster shot, bad actors are doing everything they can to slow down vaccinations and undermine other basic ways to keep Americans safe.

As the Supreme Court prepares to hear oral arguments on cases designed to stop federal vaccine requirements, it's important to remember that there is no legitimate scientific or medical support for the position taken by those asking the courts to stop these requirements. These [partisan groups](#) continue to push disinformation and oppose other safety measures key to ending the pandemic. By attempting to slow down vaccinations they are harming the economy, prolonging the pandemic and putting lives at risk.

### Key Facts

- **Requirements Improve Vaccination Rates And Save Lives.** In a recent filing, Solicitor General Elizabeth Prelogar wrote the OSHA vaccine or test requirement would “[save over 6,500 worker lives and prevent over 250,000 hospitalizations](#) over the course of six months.” Vaccine requirements are an extremely effective tool to increase vaccination rates, in the private sector and among health care systems. Aftering issuing a vaccine requirement, United Airlines reported that [99.7 percent](#) of its 67,000 member workforce complied and is vaccinated. HHS Secretary Bercerra has “cited examples of health care systems that had adopted vaccination requirements with [99.5%, 99%, and 95% compliance](#).”
- **Experts Agree, Vaccination Requirements Are Needed To End the Pandemic.** An amicus brief filed by former HHS Secretaries and CMS administrators described broad support from medical and public health experts for the CMS rule, stating “[53 organizations](#)—that together represent essentially the entire health care profession in the United States—have reached the same conclusion. They ‘advocate that all health care and long-term care employers require their workers to receive the COVID-19 vaccine.’” More than a [dozen medical groups, 30 deans of leading academic programs, and 104 leading public health and health policy scholars](#) have signed amicus briefs or publicly supported vaccination requirements for private sector workers.
- **Americans Support Vaccination Requirements.** There is overwhelming support for the CMS and OSHA vaccination rules. A December poll from Hart Research found [64 percent](#) of Americans support the OSHA vaccine or test rule and [66 percent](#) back the CMS vaccination requirement.

## **Amicus Briefs in Support of the CMS and OSHA Rules: Signers and Briefs**

Leading medical and public health groups including the American Medical Association and American Public Health Association, former HHS, CMS, and OSHA officials, 30 deans of leading academic programs, and 126 leading public health and health policy scholars have filed briefs demonstrating both the clear public health need for the OSHA and CMS rules and the flaws in the partisan legal cases seeking to strike down these vaccine requirements.

### **CMS Vaccine Mandate Case**

#### **Amicus Brief From Former Secretaries Of Health And Human Services, Administrators Of The Centers For Medicare And Medicaid Services, And Other Former Federal Health Officials.**

“Staff-to-staff transmission has been identified as a significant cause of COVID-19 infection. In addition to the threat to health care workers who become infected, transmission among health care workers increases the risk to patients, and also requires all exposed individuals to quarantine—reducing available staff at a time when health care providers are already stretched to, and often beyond, their capacity to serve patients due to the increase in COVID-19 cases...The strong consensus view of expert medical organizations is that best way to protect patients, health care workers, and the nation’s health care system is for health care workers to be vaccinated against COVID-19.”

[\[12/21\]](#)

#### **Amicus Brief From American Public Health Association, Association Of American Medical Colleges, 22 Deans Of Leading Academic Programs, And 126 Leading Public Health And Health Policy Scholars.**

“[T]he overwhelming public-health and scientific consensus supports the need to mandate vaccination of eligible staff at Medicaid and Medicare facilities to protect Medicare and Medicaid patients, as well as the healthcare workers who provide them care....well-established evidence, buttressed by more recent, cutting-edge empirical studies during the pandemic, shows that vaccination can effectively reduce SARS-CoV-2 exposure and transmission in healthcare settings.” [\[12/23/21\]](#)

#### **Solicitor General Elizabeth B. Prelogar’s Reply In Support Of Applications For Stays.**

“The remaining considerations overwhelmingly favor granting a stay to allow the rule to protect Medicare and Medicaid patients while the appeals are pending. The preliminary injunctions were imposed right as the highly transmissible Omicron variant emerged and at the beginning of the winter holiday season, with its predictable increases in travel and indoor social gatherings. The explosion in COVID-19 cases that has resulted from those developments has severely strained the Nation’s healthcare system and heightened the danger to vulnerable Medicare and Medicaid patients...it bears repeating that the rule

has been challenged only by States, not any private facilities impacted by the rule -- or their workers, who may seek medical or religious exemptions. And the interests the States assert do not support the sweeping relief granted by the district courts." [\[1/22\]](#)

**Amicus Brief From Service Employees International Union, American Federation Of Teachers, And American Federation Of State, County, And Municipal Employees.**

"Covid-19 vaccines are extraordinarily effective. One study estimated that the U.S.'s vaccination program had prevented more than 10.3 million hospitalizations, and more than 1.1 million additional deaths by November 2021. Without vaccines, daily deaths could have jumped to as high as 21,000 per day—more than 5.2 times the level of the record peak. As of October 2021, rates of hospitalization among unvaccinated adults were nearly 12 times the rates for fully vaccinated adults." [\[12/22/21\]](#)

**Amicus Brief From Medical Groups.**

"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." [\[12/21/21\]](#)

**OSHA Vaccine Or Test Case**

**Amicus Brief From Former OSHA Administrators.**

"OSHA [is authorized] to issue emergency temporary standards to protect employees from 'grave danger' resulting 'from exposure to substances or agents determined to be toxic or physically harmful,' and from 'new hazards'...Toxic substances and physically harmful agents are rarely confined to workplaces, and OSHA, throughout its history, has acted to protect workers against workplace exposures to hazards that they may also encounter outside the worksite." [\[12/22/21\]](#)

**Amicus Brief From American Public Health Association, Association Of Schools And Programs Of Public Health, 12 Leading Public Health And Health Care Organizations, 30 Deans Of Leading Academic Programs, And 109 Leading Public Health And Health Policy Scholars.**

"The science is also clear about the best way to combat COVID-19's spread—vaccines. All the evidence shows that vaccination significantly reduces the likelihood that workers will transmit COVID-19 and infect other workers, especially when combined with regular testing and other mitigation measures. And vaccination drastically reduces the chance of hospitalization and death. For these reasons, numerous employers have already imposed vaccine requirements, which have engendered widespread vaccination uptake and have consistently proven effective." [\[12/30/21\]](#)

### **Amicus Brief From Medical Groups.**

“The statistics on COVID-19 vaccine efficacy speak for themselves. No other measure has been shown to reduce the risk of infection, hospitalization, and death to the degree that vaccination does. The science is clear: no arguments against the need for vaccination are medically valid, other than to accommodate a medical contraindication.” [\[12/30/21\]](#)

### **Amicus Brief From Union Petitioners.**

“[T]he ETS is necessary to protect the workers they represent, and millions of others, from the grave danger COVID-19 currently poses in their workplaces....the ETS will significantly reduce the devastating toll COVID-19 has had, and continues to have, on working families due to exposure in their workplaces...The public interest demands that OSHA’s modest protections against these threats remain in place.” [\[12/30/21\]](#)

### **Amicus Brief From National Disability Rights Network And The Judge David L. Bazelon Center For Mental Health Law.**

“As our nation contends with the dual threat of a public health emergency and economic recession that have both had a disproportionate impact on persons with disabilities, it is incumbent upon the Court to consider how enjoining the ETS would exacerbate the historical exclusion and contemporary inequities that these communities have already faced in the workplace and in society at large.” [\[12/30/21\]](#)

### **Who is Behind the Lawsuits to Stop the OSHA and CMS Rules**

While support for the OSHA and CMS rules comes from dozens of public health and medical groups and more than one hundred experts, the legal attacks against them originated and are supported by the same elected officials responsible for the endless efforts to repeal or overturn the Affordable Care Act , outside dark money groups, and discredited physicians. These groups continue to push disinformation, attack masks, and attempt to derail other safety measures key to fighting the pandemic. By slowing down vaccinations, these groups are prolonging the pandemic and harming the economy in hopes of political gain.

*Who Is Behind The Lawsuits to Stop the OSHA and CMS Rules*

### **America First Legal**

**America First Legal Was Established By Former Trump Aide Stephen Miller “To Make Joe Biden’s Life Miserable.”** “Former Trump White House policy adviser Stephen Miller, known for his

hard-line immigration policies and conservative culture war postures, is launching a new legal group. And he's looking to use it to make Joe Biden's life miserable. The group, which will be known as America First Legal, will help organize Republican attorneys general against perceived executive branch abuses in addition to filing lawsuits of its own, according to six people familiar with the planning." [Politico, [3/26/21](#)]

**AFL's Board Includes Former Trump Officials Mark Meadows, Russ Vought, And Matthew Whitaker.** "A Trumpist answer to legal groups such as the American Civil Liberties Union (ACLU) and Common Cause, AFL is the latest example of the former president's inner circle seeking to rouse his movement as he weighs a possible 2024 run to return to the White House. AFL's board includes Miller, former Trump White House Chief of Staff Mark Meadows, former Office of Management and Budget Director Russ Vought, and former acting U.S. Attorney General Matthew Whitaker." [Bloomberg, [10/12/21](#)]

**Stephen Miller Believes That His Suit Against Vaccine Mandates Will "Save Our Liberties And Our Constitutional System Of Government."** "Statement From America First Legal President Stephen Miller: 'These imperial executive mandates are unlawful, unconstitutional, unacceptable, unconscionable and un-American. America First Legal and the Texas Public Policy Foundation have filed these historic lawsuits to defeat these illegal decrees and save our liberties and our constitutional system of government.'" [America First Legal Press Release, [11/5/21](#)]

### **Defending The Republic**

**Defending The Republic Was Established By Sidney Powell, Former Member Of Trump Election Legal Team.** Defending the Republic, a group founded by attorney and conspiracy theorist Sidney Powell, a peddler of 2020 election disinformation, filed an amicus brief in the OSHA vaccine or test in support of a stay or injunction. Defending the Republic makes [outrageous and false statements](#) throughout the brief, claiming "DTR seeks to inform the Court that the Pfizer COVID-19 vaccine mandated by the OSHA ETS and described as being the one approved by the FDA, i.e., Comirnaty, is not currently available to anyone in the United States," and "The only vaccines available are experimental products."

### **America's Frontline Doctors**

**PolitiFact Confirmed The Group's Ties To Republican Politicians And Conservative Media.** "Tea Party Patriots, a conservative group that is part of a coalition to end state lockdowns aimed at preventing the spread of the virus, organized the press conference [outside the Supreme Court, with America's Frontline Doctors calling for the use of hydroxychloroquine to treat COVID-19.] Republican Rep. Ralph Norman of South Carolina introduced the doctors at the beginning of the video. Breitbart, a conservative news site, recorded the event." [PolitiFact, [7/28/20](#)]

**America's Frontline Doctors' SCOTUS Amicus Brief Is Riddled With Factual Inaccuracies And Political Attacks On OSHA.** "It is the consensus of the medical community that the currently available Covid-19 vaccine injections do not prevent the spread of SARS-CoV-2. Relevant federal agencies have repeatedly acknowledged this consensus...it is universally accepted that the Covid-19 injections do not stop the transmission or acquisition of the virus between persons...Accordingly, requiring Covid-19 'vaccination' serves no compelling state interest at all, and fails the fundamental prong of the strict scrutiny test." [America's Frontline Doctors Amicus Brief, [12/30/21](#)]

### **Additional Online Resources**

- [How The OSHA Vaccine Or Testing Requirement Protects Workers](#)
- [Former OSHA Officials, Medical Professionals, and Public Health Experts Agree: OSHA Can and Must Protect Workers From COVID-19](#)
- [Former Secretaries of Health and Human Services and the Centers for Medicare and Medicaid Services File Brief Before SCOTUS: CMS Can and Must Protect Patients From COVID-19](#)
- [Far-Right Extremist Groups Are Working Overtime to Prolong the Pandemic, Putting Lives At Risk](#)
- [Republican Appointed Federal Judges Using Misinformation and Conspiracy Theories To Rule Against Vaccination Rules](#)
- [Six Ways Republicans Are Prolonging the Pandemic By Playing Politics With People's Lives As Omicron Variant Spreads Across the Globe](#)
- [Amicus Briefs in Support of the CMS and OSHA Rules: Signers and Briefs](#)
- [Status Of Lawsuits on Federal Vaccine Requirements: January 4, 2021](#)