

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STATE OF TEXAS and §
LUBBOCK INDEPENDENT SCHOOL §
DISTRICT, §
Plaintiff, §

v. §

XAVIER BECERRA, in his official §
capacity as Secretary of Health and §
Human Services; UNITED STATES §
DEPARTMENT OF HEALTH AND §
HUMAN SERVICES; JOOYUEN §
CHANG, in her official capacity as §
Principal Deputy Assistant Secretary; §
ADMINISTRATION FOR CHILDREN §
AND FAMILIES; KATIE HAMM, in §
her official capacity as Deputy Assistant §
Secretary for Early Childhood §
Development; OFFICE OF EARLY §
CHILDHOOD DEVELOPMENT; §
BERNADINE FUTRELL, in her official §
capacity as Director of the Office of Head §
Start; OFFICE OF HEAD START; and §
JOSEPH R. BIDEN, in his official §
capacity as President of the United §
States, §
Defendants. §

CIVIL ACTION NO. 5:21-CV-300

ORIGINAL COMPLAINT

I. INTRODUCTION

1. Plaintiffs bring this action to challenge Defendants’ Interim Final Rule with Comment, 86 Fed. Reg. 68,052 (November 30, 2021), entitled “Vaccine and Mask Requirements To Mitigate

the Spread of COVID-19 in Head Start Programs” (hereinafter “Interim Final Rule”) (attached as Exhibit 1).

2. The Interim Final Rule imposes an unprecedented Vaccine Mandate on Head Start staff, volunteers, and contractors throughout the nation. It also imposes an unprecedented Mask Mandate on children two years of age and older who attend Head Start, as well as any individual in a Head Start facility—such as parents picking up or dropping off their children.

A. The Head Start Program

3. Head Start is a federal grant program that provides funding to school districts, nonprofits, and other community educational providers. Head Start programs promote the school readiness of infants, toddlers, and preschool-aged children from low-income families. Head Start Programs, Office of Head Start (Nov. 3, 2020), <https://www.acf.hhs.gov/ohs/about/head-start>.

4. Head Start programs are available at no cost to children ages birth to 5 from low-income families. *Id.* Families and children experiencing homelessness, and children in the foster care system are also eligible. *Id.* Preschool students whose attendance is funded via Head Start grant funding are often in preschool classrooms with other students whose attendance is funded by either state funds, district funds, or parent tuition. *See* Declaration of Lubbock ISD Superintendent Dr. Kathy Rollo, attached as Exhibit 3.

5. Head Start programs deliver services through 1,600 agencies in local communities, and provide services to more than a million children every year, in every U.S. state and territory. *Id.*

6. The purpose of Head Start is to “promote the school readiness of low-income children by enhancing their cognitive, social, and emotional development—(1) in a learning environment that supports children’s growth in language, literacy, mathematics, science, social and emotional

functioning, creative arts, physical skills, and approaches to learning; and (2) through the provision to low-income children and their families of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary.” 42 U.S.C. § 9831.

7. The Office of Head Start provides grants to Head Start agencies in Texas and throughout the country. Head Start programs are operated by several types of entities, including independent school districts. Staff employed by Head Start programs are not federal employees.

8. According to the United States Department of Health and Human Services’ Tracking Accountability in Government Grants System website, HHS awarded a total of \$842,280,184 in grants to Texas Head Start programs in fiscal year 2021. Exhibit 2.

B. The Head Start Interim Final Rule

9. On November 30, 2021, after months of choosing to encourage Head Start employees and volunteers to receive the COVID-19 vaccination, Defendants, at the direction of President Biden, moved the goalposts and issued the Interim Final Rule, which contains a Vaccine Mandate and Mask Mandate.¹

10. The Vaccine Mandate forces local Head Start programs, including the programs operated by Texas Tech University and the Lubbock Independent School District (“LISD”), to choose between either cancelling the program or forcing their staff, contractors, and volunteers to comply

¹ See, e.g., “Tips for Talking to Head Start Families and Staff About the COVID-19 Vaccines” (dated March 24, 2021), <https://eclkc.ohs.acf.hhs.gov/publication/tips-talking-head-start-families-staff-about-covid-19-vaccines>.

with an illegal federal mandate that violates their constitutional rights, while dealing with the inevitable fallout from the resulting resignations that will damage the program.²

11. The Mask Mandate forces Americans with children in Head Start to choose between complying with the illegal mandate and allowing staff to force their children to wear masks, or withdrawing their children from the program. As Defendants admit, enforcing the Mask Mandate on toddlers will require frequent staff physical intervention: “It should be noted that like all new skills, children will need to be taught the proper way to put a mask on and keep a mask on. While children are adaptable, they are still in the early stages of development and may need reminders and reinforcements to comply with this new practice.” 86 Fed. Reg. at 68,060. Time spent reminding and reinforcing toddlers to wear masks is time away from enhancing their cognitive, social, and emotional development— to say nothing of the detrimental effect mask wearing has on that very cognitive, social, and emotional development. Presumably, head start programs will have to discharge toddlers who are unable or unwilling to comply with the Mask Mandate from the program or risk their continued receipt of Head Start financial assistance.

² Declaration of Lubbock ISD Superintendent Dr. Kathy Rollo, attached as Exhibit 3 (“If LISD complies with these new requirements, it has the potential for a mass exodus of Pre K staff.”); Declaration of Vice Chancellor and General Counsel of the Texas Tech University System, Eric Bentley, attached as Exhibit 4 (“Staff must be fully vaccinated by January 2022 to remain employed with the Head Start program.”); *see also* Elisabeth Waldon, ‘What is on your radar?’ Gov. Whitmer meets with Howard City leaders to hear their thoughts, concerns, The Daily News, Dec. 7, 2021, <https://www.thedailynews.cc/articles/what-is-on-your-radar/> (Michigan Governor Gretchen Whitmer stating her opposition to vaccine mandates because “I know that if that mandate happens, we’re going to lose state employees. That’s why I haven’t proposed a mandate at the state level. Some states have. We have not, we’re waiting to see what happens in court”); Andrea Johnson, *Head Start must close classrooms, fire staff due to federal COVID-19 vaccine mandate*, Minot Daily News, Dec. 10, 2021, <https://www.minotdailynews.com/news/local-news/2021/12/head-start-must-close-classrooms-fire-staff-due-to-federal-covid-19-vaccine-mandate/>.

12. Moreover, the Mask Mandate requires *anyone* at a Head Start program—including parents visiting, dropping their children off, or picking them up—to wear masks.

13. The Vaccine Mandate applies even if an individual has natural immunity.

14. The Mask Mandates applies even if an individual has natural immunity or is vaccinated.

C. The Biden Administration’s Infringement on State Rights

15. The State of Texas and the LISD have sought to protect individual rights while also encouraging and promoting effective public health techniques to combat the spread of COVID-19. Disregarding Texas’s plan to stop the spread of COVID-19, the federal government, however, has launched a coordinated effort to decide for itself whether and when Americans must receive the vaccine.

16. Instead of deferring to the States’ expertise to address the specifics of their state needs and unique populations, President Biden has chosen to unlawfully take matters into his own hands. In fact, after months of saying the federal government could not mandate vaccines, President Biden announced that his “patience was wearing thin” with Americans who choose not to receive the COVID-19 vaccine.³ He even went so far as to single out Texas as an obstacle to be removed because of its stance in favor of individual liberty. Speaking about Texas Governor, Greg Abbott, President Biden threatened that “[i]f they’ll not help—if these governors won’t help us beat the

³ Joseph Biden, Remarks by President Biden on Fighting the Covid-19 Pandemic (Sept. 9, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/09/remarks-by-president-biden-on-fighting-the-covid-19-pandemic-3/>.

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