

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

LIVINGSTON EDUCATIONAL
SERVICE AGENCY; SAGINAW
INTERMEDIATE SCHOOL
DISTRICT; WALLED LAKE
CONSOLIDATED SCHOOL
DISTRICT; and WAYNE-
WESTLAND COMMUNITY
SCHOOLS,

Plaintiffs,

Case No. 2:22-cv-10127

vs.

Hon.

XAVIER BECERRA, in his official
capacity as Secretary of Health and
Human Services; UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; JOOYEUN
CHANG, in her official capacity as
Assistant Secretary and Principal
Deputy Assistant Secretary of the
Administration for Children and
Families; ADMINISTRATION FOR
CHILDREN AND FAMILIES; and
BERNADINE FUTRELL, in her
official capacity as the Director of the
Office of Head Start,

Defendants.

Amy E. Murphy (P82369)
Robert T. Schindler (P70925)
Rebecca L. Strauss (P64796)
Breanne N. Gilliam (P85611)
Brett Swearingen (*P number pending*)
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VERIFIED COMPLAINT

Plaintiffs comprise Head Start grantees and Head Start contractors throughout the State. They file this Complaint for declaratory judgment, injunctive relief, and other relief to vindicate their rights and to preserve their ability to provide necessary services to children and families who participate in Head Start programs, as detailed below:

Introduction

1. Plaintiffs bring this action to challenge Defendants' Interim Final Rule, 86 Fed. Reg. 68,052 (Nov. 30, 2021) (to be codified at 45 C.F.R. pt. 1302), entitled "Vaccine and Mask Requirements To Mitigate the Spread of COVID-19 in Head Start Programs" (hereinafter "Head Start Mandate" or "Mandate").

2. The Head Start Mandate unlawfully imposes a mandatory vaccination requirement on all staff and certain contractors and volunteers. Those subject to the Mandate must be fully vaccinated against COVID-19 by January 31, 2022.

3. The Head Start Mandate, if enforced, will cause irreparable harm to Plaintiffs and the children and families whom Head Start was created to serve.

Plaintiffs will lose staff, which will result in classroom and program closures. Head Start children and families, a majority of whom live below the poverty line, will lose access to the Head Start services that they rely on for high quality early childhood education, food, and childcare.

Jurisdictional Allegations

4. Plaintiff Livingston Educational Service Agency (“Livingston ESA”) is a Michigan intermediate school district, headquartered at 1425 W. Grand River Road, Howell, Michigan 48843.

5. Plaintiff Saginaw Intermediate School District (“Saginaw ISD”) is a Michigan intermediate school district, headquartered at 3933 Barnard Road, Saginaw, Michigan 48603.

6. Plaintiff Walled Lake Consolidated School District (“Walled Lake”) is a Michigan General Powers school district, headquartered at 850 Ladd Road, Building D., Walled Lake, Michigan 48390.

7. Plaintiff Wayne-Westland Community Schools (“Wayne-Westland”) is a Michigan General Powers school district that provides educational opportunities for students from Westland, Wayne, Canton, Dearborn Heights, Inkster, and Romulus. Wayne-Westland is headquartered at 36745 Marquette, Westland, Michigan 48185.

8. Defendant Xavier Becerra is the Secretary of Health and Human Services. He is being sued in his official capacity.

9. Defendant United States Department of Health and Human Services (HHS) is an executive department of the United States government.

10. Defendant JooYeun Chang is the acting Assistant Secretary and Principal Deputy Assistant of the Administration for Children and Families. She is being sued in her official capacity.

11. Defendant Administration for Children and Families is an agency within HHS.

12. Defendant Bernadine Futrell is the director of the Office of Head Start. She is being sued in her official capacity.

13. The Court has original jurisdiction under 28 U.S.C. § 1331.

14. This Court has authority to award the requested injunctive relief under Federal Rule of Civil Procedure 65 and the requested declaratory relief under 28 U.S.C. §§ 2201-2202 and Federal Rule of Civil Procedure 57.

15. Venue in this district is proper because a substantial part of the events or omissions giving rise to the claim occurred in this district. 28 U.S.C. § 1391(b)(2).

General Allegations

The Head Start Program

16. Head Start is a federal program governed by statute and created “to promote the school readiness of low-income children by enhancing their cognitive, social, and emotional development.” 42 U.S.C. § 9831.

17. Head Start provides educational, nutritional, social, health and other services to low-income children and their families. 42 U.S.C. § 9831(2).

18. Early Head Start programs provide comprehensive child development and family support services to low-income infants and toddlers under the age of three and their families and to pregnant women and their families.

19. With limited exceptions, children are not eligible to participate in Head Start programs unless their families’ incomes fall below the poverty line. 42 U.S.C. § 9840.

20. Head Start programs have strict child-to-teacher ratios that must be followed in the classrooms.

21. A class that serves children under 36 months old is required to have two teachers with no more than eight children, or three teachers with no more than nine children. Each teacher in the class must have primary responsibility for no more than four children. 42 C.F.R. § 1302.21(b)(2).

22. A class with a majority of children who are three years old must have no more than 17 children with one teacher plus a teaching assistant or two teachers. 42 C.F.R. § 1302.21(b)(3).

23. A class with a majority of children who are four and five years old must have no more than 20 children with one teacher plus a teaching assistant or two teachers. 42 C.F.R. § 1302.21(b)(4).

24. These ratio restrictions make the risk of classroom or program closures significant. The loss of one teacher can mean the closure of a full classroom and the forced withdrawal of the children in that classroom from the program.

25. A single classroom closure has a devastating impact on children enrolled in the Head Start program who depend on that program for quality early childhood education.

26. A closure of a single classroom also deprives the families of enrolled children from Head Start's services and makes it difficult for the parents of enrolled children to maintain employment.

27. As Defendants state, “[f]amilies rely on Head Start programs to provide stable and reliable early care and education services to their children, and the effects of intermittent closures are significant.” 86 Fed. Reg. at 68,057.

The Head Start Mandate

28. On September 9, 2021, President Joe Biden announced several federal vaccine mandates, including one for the Head Start program.¹

29. On November 30, 2021, the Secretary issued the Head Start Mandate imposing a COVID-19 vaccination mandate in Head Start programs. 86 Fed. Reg. at 68,052.

30. The Mandate requires “all Head Start staff, contractors whose activities involve contact with or providing direct services to children and families, and volunteers working in classrooms or directly with children to be vaccinated for COVID-19 by January 31, 2022.” *Id.* at 68,052.

31. The Mandate applies to “all staff who work with enrolled children and families in any capacity regardless of funding source.” *Id.* at 68,060.

32. Contractors include outside service providers, bus drivers, and any other contractors who contact or provide direct service to children and families.

33. “[A]ll volunteers [must] adhere to these requirements not just those who regularly volunteer.” *Id.* at 68,061. Even someone who volunteers on a

¹ White House, Remarks by President Biden on Fighting the COVID-19 Pandemic (Sept. 9, 2021), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/09/remarks-by-president-biden-on-fighting-the-covid-19-pandemic-3/> (last visited Jan. 20, 2022) (**Exhibit 1**).

single occasion in a Head Start classroom is mandated by HHS to be fully vaccinated against COVID-19.

34. “Fully vaccinated,” for purposes of the Mandate, means two weeks following receipt of (i) the single dose of an approved single-dose vaccine or (ii) the second dose of an approved two-dose vaccine. *Id.* at 68,060.

35. The Office of Head Start has advised Head Start programs that those subject to the Mandate must have their second dose in a two-dose series or their first dose in a single-dose series by January 31, 2022.

36. There is no testing option as an alternative to the vaccine requirement.

37. Instead, a weekly testing option is available only to those (i) for whom a vaccine is medically contraindicated; (ii) for whom medical necessity requires a delay in vaccination; or (iii) who are entitled to an accommodation under applicable Federal law. *Id.* at 68,061-62.

38. The Mandate also requires “universal masking, with some noted exceptions, for all individuals two years of age and older when there are two or more individuals in a vehicle owned, leased, or arranged by the Head Start program; when they are indoors in a setting where Head Start services are provided; and, for those not fully vaccinated, outdoors in crowded settings or during activities that involve close contact with other people.” *Id.* at 68,053.

39. The masking requirement, which went into effect immediately, is not the subject of this challenge.

40. If a Head Start program does not comply with the Mandate, the Secretary must take certain corrective action, including initiating proceedings to terminate the program's funding. 42 U.S.C. § 9836a(e)(1)(C).

41. Defendants assert that they have authority to issue the Head Start Mandate under 42 U.S.C. § 9836a(a)(1)(C)-(E), which provides that “[t]he Secretary shall modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs under this subchapter, including—...(C) administrative and financial management standards; (D) standards relating to the condition and location of facilities (including indoor air quality assessment standards, where appropriate) for such agencies and programs... [and] (E) such other standards as the Secretary finds to be appropriate.”

42. The Head Start Mandate is not a modification of a program performance standard.

43. HHS has never before mandated vaccination for Head Start staff, contractors, or volunteers—and not even for children enrolled in a Head Start program.

44. A vaccine mandate is simply not within the Secretary's delegated authority.

45. The Mandate is otherwise invalid under federal statutory and constitutional law.

46. The Secretary is currently enjoined from enforcing the Head Start Mandate in 25 states (but not in Michigan). *See Texas v. Becerra*, No. 5:21-CV-300-H, 2021 WL 6198102 (N.D. Tex. Dec. 31, 2021); *Louisiana v. Becerra*, No. 3:21-CV-04370, 2022 WL 16571 (W.D. La. Jan. 1, 2022).

The Irreparable Harm to Plaintiffs

47. The Mandate will cause devastating and irreparable harm to Plaintiffs and to the children and families whom Head Start was created to serve.

48. Plaintiffs are Head Start grantees and contractors who serve children and families throughout the State of Michigan.

49. Under a threat of terminated funding, Head Start programs are forced to comply with a mandate that means terminating or losing staff and relevant contractors and volunteers who are not vaccinated. This will result in a reduction of Head Start services provided to qualifying children and families. Head Start programs and Head Start children and families will suffer a grave and irreparable harm.

50. Plaintiff Livingston ESA is a Head Start grant recipient and has 60 classroom staff members, 29 special education staff members, 24 transportation

staff members, 14 office/leadership staff members, and 10 substitutes who all either are Head Start staff or provide services to Head Start classrooms and students.

51. Livingston ESA currently serves 167 Head Start students, with a maximum capacity of 174.

52. Livingston ESA provides a wide variety of essential services to Head Start students. Some of the services include high quality education, meals, speech therapy, occupational therapy, social work services, transportation, parent engagement hours, translation services, and nutrition/dietician services. Livingston ESA also provides meals to Head Start students who are quarantining at home.

53. Livingston ESA takes several precautionary measures to mitigate the spread of COVID-19 including requiring classroom staff to wear a mask and students to wear a mask while in class.

54. If a student or staff tests positive for COVID-19, they must quarantine for ten days. If there is a close contact with someone in the student's household, the student must stay at home through the quarantine period plus an additional ten days of isolation.

55. Since December 1, 2021, 73.3% of Livingston ESA employees who have tested positive for COVID-19 are vaccinated.

56. At least 37 staff members at Livingston ESA remain unvaccinated. If Livingston ESA is forced to fire unvaccinated staff members,

multiple classroom closures will occur. For every classroom that is closed, 16 students would no longer be able to participate in Head Start.

57. Plaintiff Saginaw ISD is also a Head Start grant recipient and currently has about 180 staff members and serves 859 Head Start students plus another 156 Early Head Start students.

58. Saginaw ISD provides Head Start students with high quality education, special education services, occupational therapy, physical therapy, and speech therapy.

59. About 8% of Saginaw ISD staff is unvaccinated.

60. Saginaw ISD enforces masking as a way to mitigate the spread of COVID-19.

61. Losing staff, which is very likely as a result of the Head Start Mandate, would force Saginaw ISD to close multiple Head Start classrooms.

62. Plaintiff Walled Lake is a Head Start contractor that currently serves 48 Head Start students.

63. It employs seven teachers/assistants, two office staff, seven special education staff, and six custodians who provide services or come in contact with Head Start classrooms and students.

64. Walled Lake provides special education services and daily meals to Head Start students.

65. If staff members quit or are terminated because of the Head Start Mandate, Walled Lake would be faced with significant harm. The loss of one special education staff would result in a reallocation of service models and potentially a program closure. The loss of one teacher or assistant would result in a program closure.

66. Plaintiff Wayne-Westland is a Head Start grant recipient and operates eleven Head Start classrooms that currently serve 213 students with a maximum capacity of 224 students. Head Start funding pays for 32 Wayne-Westland staff members. Wayne-Westland also staffs 16 Head Start contractors who serve as custodians, social workers, kitchen staff, and speech teachers. An additional 26-30 non-Head Start funded staff members have interaction with Head Start students when multiple classrooms share the gymnasium for indoor play time.

67. The Head Start classrooms at Wayne-Westland provide a mix of full-day and half-day programming. Each full-day class is served breakfast, lunch and a snack. Each half-day program is served either breakfast and lunch or lunch and a snack.

68. Wayne-Westland also provides family service workers for each family enrolled in Head Start. The family service workers help coordinate support services to the whole family, not just the children, by connecting families to resources and supporting them throughout the educational process.

69. Wayne-Westland currently uses a number of COVID-19 mitigation strategies to keep children, staff, and visitors safe. All toys and flat surfaces are cleaned regularly. Current health department recommendations, including wearing masks and practicing hand washing, are strictly followed. Wayne-Westland engages in contact tracing and has procedures in place to offer virtual learning if the report of a positive COVID-19 test requires a classroom to close for quarantine. Additionally, staff and families engage in daily wellness checks to ensure they are not sick when coming to class.

70. The Head Start Mandate would have devastating impacts on Wayne-Westland. Every classroom must have two adults in it at all times, with a ratio of about one adult for every eight students. Currently, one classroom is already closed because Wayne-Westland has not been able to secure a qualified teacher.

71. At least four unvaccinated staff, including the cook, have expressed their intention to leave their positions if required to get the vaccine, which would result in at least one classroom closure and the inability to provide meals to the students.

72. With already one classroom closed as a result of the tight labor market and national teacher shortage, the threat posed by the Head Start Mandate is even more imminent.

73. Yasmina Vinci, Executive Director of the National Head Start Association (NHSA), authored a December 15, 2021 letter to Defendant Becerra detailing “the potential devastating effects the new rule on vaccines and masking will have on the children and families [Head Start] serves.” (**Exhibit 2**).

74. According to the letter, a survey of Head Start grantees conducted by the NHSA to understand the potential impact of the Mandate showed that the Mandate can lead to Head Start programs losing between 46,614 and 72,422 staff, or 18% to 26% of all staff, resulting in the closure of over 1,300 classrooms.

75. According to the letter, comments shared during a December 10, 2021 NHSA webinar with over 520 grantees and program administrators reveals that “[v]ital elements of the Head Start model—developmentally appropriate educational experiences, qualified and dedicated staff who have the children’s best interest at heart, and the opportunity for parents to be involved in their child’s education—will not be available for the children if classrooms are unable to operate because of the imposition of the new rule.”

76. According to the letter, many programs are also at risk of closing because the children they serve rely on the school districts for bus transportation to and from the program, but transportation personnel is the least vaccinated group.

Causes of Action

**Count I – The Head Start Mandate Exceeds Statutory Authority
and Is Contrary to Law
42 U.S.C. § 9836a(a); 5 U.S.C. § 706**

77. Plaintiffs incorporate all preceding allegations.

78. HHS is a creature of statute.

79. Defendants assert that the Head Start Mandate is statutorily authorized under 42 U.S.C. § 9836a(a)(1). *See* 86 Fed. Reg. at 68,052.

80. Congress delegated to the Secretary the authority to “modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs under this subchapter, including—...(C) administrative and financial management standards; (D) standards relating to the condition and location of facilities (including indoor air quality assessment standards, where appropriate) for such agencies and programs... [and] (E) such other standards as the Secretary finds to be appropriate.” 42 U.S.C. § 9836a(a)(1)(C)-(E).

81. The Head Start Mandate is not a modification of a performance standard.

82. It is not related to administrative and financial management standards nor is it related to standards involving the condition and location of facilities.

83. Likewise, Defendants’ authority under subsection (E) does not justify a mask and vaccination mandate because “‘such other’ standards fall under the banner of ‘performance standards’ and must be defined in relation to subsections (A)-(D).” *Texas v. Becerra*, 2021 WL 6198109, at *7.

84. Agency action that is found to be “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” must be held unlawful and set aside by the reviewing court. 5 U.S.C. § 706(2)(C).

85. Because Congress did not delegate to Defendants the authority to impose the vaccination requirement in the Head Start Mandate, the Mandate exceeds the Secretary’s statutory authority and must be held unlawful.

**Count II – The Head Start Mandate Exceeds Statutory Authority
and Is Contrary to Law
42 U.S.C. § 9836a(a); 5 U.S.C. § 706**

86. Plaintiffs incorporate all preceding allegations.

87. The Mandate also exceeds the statutory authority because Defendants did not consult with the required experts.

88. Prior to modifying a performance standard, the Secretary must “consult with experts in the fields of child development, early childhood education, child health care, family services (including linguistically and culturally appropriate services to non-English speaking children and their families), administration, and

financial management, and with persons with experience in the operation of Head Start programs.” 42 U.S.C. § 9836a(a)(2)(A).

89. The Secretary failed to consult with all of the required experts and instead only “consulted with experts in child health, including pediatricians, a pediatric infectious disease specialist, and the recommendations of the CDC and FDA.” 86 Fed. Reg. at 68,054.

90. The Secretary must also take into consideration many factors prior to modifying a performance standard including the unique challenges faced by individual programs. 42 U.S.C. § 9836a(a)(2)(B)(x).

91. Instead of considering the unique challenges faced by individual programs, the Secretary issued a nationwide, one-size-fits-all mandate.

92. Agency action that is found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” must be held unlawful and set aside by the reviewing court. 5 U.S.C. § 706(2)(A),(C).

93. Because Defendants failed to consult with the required experts and consider the unique challenges faced by individual programs, the Head Start Mandate exceeds the Secretary’s statutory authority, is not in accordance with the law, and must be held unlawful.

**Count III – The Head Start Mandate Exceeds Statutory Authority
and Is Contrary to Law
42 U.S.C. § 9836a(a); 5 U.S.C. § 706**

94. Plaintiffs incorporate all preceding allegations.

95. The Secretary is required to ensure that any revisions of standards will not result in the elimination of or any reduction in quality, scope, or types of health, educational, parental involvement, nutritional, social, or other required services provided under the standards. 42 U.S.C. § 9836a(a)(2)(C).

96. Enforcement of the Head Start Mandate will result in program and classroom closures due to staff shortages, thus reducing, and in some instances eliminating, services—the very thing that the Secretary is required to ensure does not occur.

97. Agency action that is found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” must be held unlawful and set aside by the reviewing court. 5 U.S.C. § 706(2)(A),(C).

98. Because the Head Start Mandate will result in an elimination or reduction of services, the Head Start Mandate exceeds the Secretary’s statutory authority, is not in accordance with the law, and must be held unlawful.

**Count IV – The Head Start Mandate Violates the
APA’s Notice-and-Comment Requirement
5 U.S.C. § 553; 5 U.S.C. § 706**

99. Plaintiffs incorporate all preceding allegations.

100. Under the APA, an agency must publish notice of a proposed rule in the Federal Register and give the public an opportunity to comment at least thirty days before the rule goes into effect. 5 U.S.C. § 553(b)-(d).

101. A good cause exception exists if the agency finds that the notice-and-comment procedure is impracticable, unnecessary, or contrary to public interest. 5 U.S.C. § 553(b)(B).

102. The agency’s “burden to show that good cause exists is a heavy one.” *Texas v. Becerra*, 2021 WL 6198109, at *13 (citing *United States v. Cain*, 583 F.3d 408, 420 (6th Cir. 2009)).

103. Defendants did not satisfy their heavy burden.

104. Defendants claim that they have good cause to waive the notice-and-comment requirement because “a vaccine requirement for Head Start staff, certain contractors, and volunteers is an essential component of the nation’s COVID-19 response” and “it would be impracticable and contrary to the public interest for [them] to undertake normal notice and comment procedures and to thereby delay the effective date of [the Mandate]. 86 Fed. Reg. at 68059.

105. The Mandate was issued on November 30, 2021, which is 82 days after President Biden’s September 9 announcement.

106. The vaccination compliance deadline is set for January 31, 2022, 62 days after the Mandate was issued.

107. COVID-19 vaccines have been available for more than a year.

108. Defendants had more than enough time to give the public an opportunity to comment before the Mandate went into effect.

109. If Defendants had complied with that notice-and-comment procedure, they would have had to consider and address the irreparable harm claimed by Plaintiffs and other Head Start programs and the risk of widespread closures of Head Start classrooms that provide critical services to underprivileged children and their families.

110. Defendants cannot satisfy their burden of showing good cause for violating the APA’s notice-and-comment requirements.

**Count V – The Head Start Mandate is Arbitrary and Capricious
5 U.S.C. § 706(2)(A)**

111. Plaintiffs incorporate all preceding allegations.

112. Agency action that is found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” must be held unlawful and set aside by the reviewing court. 5 U.S.C. § 706(2)(A).

113. Defendants have not articulated a reasonable explanation for the Head Start Mandate.

114. Defendants acted arbitrarily and capriciously by failing to consider a testing alternative to the vaccination requirement.

115. Defendants also acted arbitrarily and capriciously because there is no evidence proving that “[e]nsuring Head Start staff are fully vaccinated significantly reduces the possibility of the program playing an unwitting part in community spread of SARS-CoV-2.” 86 Fed. Reg. at 68059.

116. The evidence shows that being fully vaccinated against COVID-19 reduces the chance of hospitalization and death, but it does not prevent infection. Fully vaccinated people can and do get infected with COVID-19 and are capable of spreading it to others.

117. Defendants ignored the CDC’s recommendation to consider other prevention strategies. According to the CDC, early childhood education and child care programs should consider multiple factors when making decisions about COVID-19 prevention strategies including the level of community transmission; COVID-19 vaccination coverage in the community and among children and staff; COVID-19 outbreaks or trends within the program and surrounding community;

strain on the community's healthcare system; and the ages of the children and the feasibility of different prevention strategies.²

118. According to the CDC, using multiple prevention strategies is the effective way to protect children and staff. Some prevention strategies include promoting vaccination, consistent mask use, physical distancing, COVID-19 testing, ventilation, handwashing, contact tracing, staying home when sick, cleaning, and disinfecting.³

119. Defendants acted arbitrarily and capriciously by skipping over all other prevention strategies and instead imposing mandatory vaccination.

120. Defendants acted arbitrarily and capriciously by creating a nationwide mandate instead of taking into account community-specific considerations.

121. Defendants acted arbitrarily and capriciously by not considering a testing option in lieu of vaccination.

122. Because HHS's action in imposing the Head Start Mandate is arbitrary and capricious, the Mandate must be held unlawful and set aside.

² Centers for Disease Control and Prevention, *COVID-19 Guidance for Operating Early Care and Education/Child Care Programs*, (Nov. 10, 2022), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/child-care-guidance.html>.

³ *Id.*

**Count VI – The Head Start Mandate Violates the Congressional Review Act
5 U.S.C. § 801; 5 U.S.C. § 808**

123. Plaintiffs incorporate all preceding allegations.

124. The Head Start Mandate is a major rule that is subject to the Congressional Review Act.

125. The Congressional Review Act defines a major rules as one that “is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.” 5 U.S.C. § 804 (2)(A)-(C).

126. “The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this [Mandate] is a major rule because it will have an annual effect on the economy of \$100 million or more.” 86 Fed. Reg. at 68,063.

127. Under the Congressional Review Act, a major rule shall be submitted to and reviewed by Congress before the rule can take effect. 5 U.S.C. § 801(a).

128. The Mandate was not submitted to Congress prior to it going into effect because the Agency relied on a good cause exception for the same reasons it did not follow the APA's notice-and-comment requirements. 86 Fed. Reg. at 68,059.

129. Defendants have failed to articulate a legitimate reason why it was impracticable and contrary to the public interest to submit the Mandate to be reviewed by Congress as required by the Congressional Review Act.

**Count VII – The Head Start Mandate Violates the Tenth Amendment
U.S. Const. amend. X**

130. Plaintiffs incorporate all preceding allegations.

131. The federal government does not have unlimited powers. States and the people retain all powers that are not delegated to the federal government by the Constitution. U.S. Const. amend. X.

132. It is long settled that public health and safety regulation belongs to the States and, with narrow exceptions, that compulsory vaccination falls within the police power of the States. *Jacobson v. Massachusetts*, 197 U.S. 11, 25, 38 (1905); *Zucht v. King*, 260 U.S. 174, 176 (1922).

133. The Head Start Mandate intrudes upon the States police power in violation of the Tenth Amendment.

**Count VIII – The Head Start Mandate Violates the Separation of Powers
U.S. Const. art. 1, § 1**

134. Plaintiffs incorporate all preceding allegations.

135. The Constitution provides that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.” U.S. Const. art. 1, § 1.

136. Under the separation of powers principle, Congress must “speak clearly when authorizing an agency to exercise powers of vast economic and political significance.” *National Federation of Independent Business v. OSHA*, 595 U.S. ___, ___ (2022) (per curiam opinion), slip op. at 6 (quoting *Alabama Association of Realtors v. Department of Health and Human Servs.*, 141 S. Ct. 2485, 2489 (2022)).

137. Compulsory vaccination by the federal government is an issue of vast economic and political significance.

138. Because Defendants cannot trace their alleged power to impose a vaccine mandate to a clear grant of authority from Congress, the Head Start Mandate violates the separation of powers.

**Count IX – The Head Start Mandate Violates the Spending Clause Power
U.S. Const. art. 1, § 8, cl. 1**

139. Plaintiffs incorporate all preceding allegations.

140. Congress has the power to “lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.” U.S. Const. art. 1, § 8, cl. 1.

141. Congress may attach conditions on the receipt of federal funds. *South Dakota v. Dole*, 483 U.S. 203, 206 (1987). However, Congress must state

those conditions unambiguously in the text of the statute so States can knowingly exercise their choice. *Id.* (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)).

142. Congress did not unambiguously attach to the receipt of Head Start funding the condition of compliance with a vaccine mandate applying to all Head Start staff, contractors whose activities involve contact with or provide services to Head Start children and families, and volunteers who work in classrooms or work directly with Head Start children.

143. Therefore, the Head Start Mandate is an unconstitutional violation of the spending power.

Prayer for Relief

For the foregoing reasons, Plaintiffs respectfully request that the Court enter a judgment that holds unlawful and sets aside the Head Start Mandate and specifically award Plaintiffs the following relief:

- a. Enter a declaratory judgment that the Head Start Mandate exceeds statutory authority and is contrary to law;
- b. Enter a declaratory judgment that the Head Start Mandate violates the Administrative Procedure Act, the Congressional Review Act, and the United States Constitution;

- c. Preliminary and permanent injunctive relief prohibiting Defendants from enforcing the Head Start Mandate;
- d. In the alternative to immediate relief that enjoins or sets aside the Head Start Mandate, a postponement of the effective date of enforcement of the Head Start Mandate, under 5 U.S.C. § 705, to preserve the rights of the parties pending this Court's full review.
- e. Any further relief that the Court deems appropriate.

MILLER JOHNSON
Counsel for Plaintiffs

Dated: January 20, 2022

By /s/ Amy E. Murphy

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gilliamb@millerjohnson.com

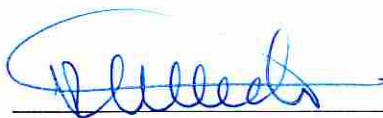
swearingenb@millerjohnson.com

VERIFICATION

I, DR. RICHARD MICHAEL HUBERT, declare

as follows:

1. I am an adult competent to testify to the matters stated herein;
2. I am the SUPERINTENDENT of Livingston Educational Service Agency, and in that capacity, I am familiar with the business of Livingston Educational Service Agency, a Plaintiff in this action;
3. I have read the foregoing Verified Complaint and, based upon my personal knowledge of the facts stated therein, the facts stated in the Verified Complaint are true to the best of my knowledge and belief.
4. If called upon to testify, I would competently testify as to the matters stated herein.
5. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Executed on:

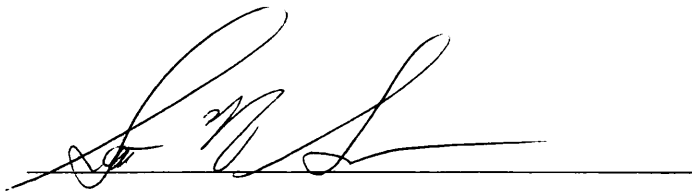
1/20/2022

VERIFICATION

I, Scott N. Sawyer, declare

as follows:


1. I am an adult competent to testify to the matters stated herein;
2. I am the Deputy Superintendent of Saginaw Intermediate School District, and in that capacity, I am familiar with the business of Saginaw Intermediate School District, a Plaintiff in this action;
3. I have read the foregoing Verified Complaint and, based upon my personal knowledge of the facts stated therein, the facts stated in the Verified Complaint are true to the best of my knowledge and belief.
4. If called upon to testify, I would competently testify as to the matters stated herein.
5. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



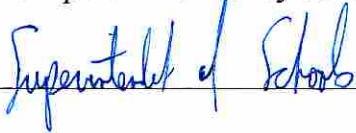
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1-20-2022

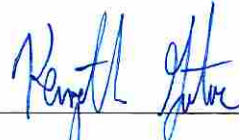
VERIFICATION

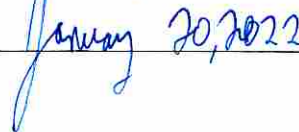
I, , declare

as follows:

1. I am an adult competent to testify to the matters stated herein;
2. I am the  of Walled Lake Consolidated School District, and in that capacity, I am familiar with the business of Walled Lake Consolidated School District, a Plaintiff in this action;
3. I have read the foregoing Verified Complaint and, based upon my personal knowledge of the facts stated therein, the facts stated in the Verified Complaint are true to the best of my knowledge and belief.
4. If called upon to testify, I would competently testify as to the matters stated herein.
5. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on:





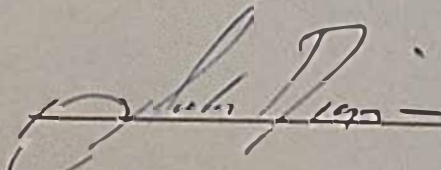
VERIFICATION

I, JOHN DIGNAN, declare

as follows:

1. I am an adult competent to testify to the matters stated herein;
2. I am the SUPERINTENDENT of Wayne-Westland Community Schools, and in that capacity, I am familiar with the business of Wayne-Westland Community Schools, a Plaintiff in this action;
3. I have read the foregoing Verified Complaint and, based upon my personal knowledge of the facts stated therein, the facts stated in the Verified Complaint are true to the best of my knowledge and belief.
4. If called upon to testify, I would competently testify as to the matters stated herein.
5. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

on:



Exec

JANUARY 20, 2022