

No. 22-40043

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

FEDS FOR MEDICAL FREEDOM; LOCAL 918, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES; HIGHLAND ENGINEERING,
INCORPORATED; RAYMOND A. BEEBE, JR.; JOHN ARMBRUST; et al.,

Plaintiffs-Appellees,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States;

THE UNITED STATES OF AMERICA; PETE BUTTIGIEG, in his official
capacity as Secretary of Transportation; DEPARTMENT OF
TRANSPORTATION; JANET YELLEN, in her official capacity as Secretary of
Treasury; et al.,

Defendants-Appellants.

**MOTION OF JAMES RODDEN, ISAAC MCLAUGHLIN, GABRIEL
ESCOTO, MICHELLE RUTH MORTON, WADDIE BURT JONES, RYAN
CHARLES BIGGERS, CAROLE LEANN MEZZACAPO, EDWARD
BRYAN SURGEON, SUSAN REYNOLDS, ROY KENNETH EGBERT,
GEORGE GAMMON, DORIS FORSHEE, JOHN LUFF, APRIL HANSON,
DAN PARENTE AND STEVE HANLEY TO FILE A BRIEF AMICI
CURIAE
IN SUPPORT OF APPELLEES**

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James Rodden, Isaac McLaughlin, Gabriel Escoto, Michelle Ruth Morton, Waddie Burt Jones, Ryan Charles Biggers, Carole Leann Mezzacapo, Edward Bryan Surgeon, Susan Reynolds, Roy Kenneth Egbert, George Gammon, Doris Forshee, John Luff, April Hanson, Dan Parente and Steve Hanley the Class Representatives in *Rodden v. Fauci*, Ca 3:21-cv-00317 (S.D. Tex.)(Galveston Div.) (“the *Rodden* Plaintiffs”) herby move, pursuant to Fed.R.App.P. 29 (a)(3) to file the accompanying brief *amici curiae*. Appellants do not consent to the filing.¹ Appellees do.

Rodden Plaintiffs are the named plaintiffs in a class action filed on November 5, 2021 in the district court below. All of them and the putative class are individuals who have had Covid-19 demonstrated through antibody testing and are federal employees subject to the instant vaccine mandate (the “Federal Employee Vaccine Mandate”).

As further described in the accompanying brief the *Rodden* Plaintiffs moved for a TRO and injunction on November 5, 2021 in the court below and that motion was denied. *Rodden v. Fauci*, No. 3:21-CV-317, — F.Supp.3d —, 2021 WL 5545234 (S.D. Tex. Nov. 27, 2021). After the New Year the *Rodden* Plaintiffs’ federal government employers ended a moratorium on adverse employment actions

¹ Counsel for Rodden Plaintiffs contacted lead counsel for Appellants by email on February 16, 2022. He responded that consent would only be granted for amici briefs filed *that day*.

and so, after amending the complaint on December 28, 2021, they again moved for injunctive relief on January 14, 2022. While that motion was pending the order *sub judice* was issued (on January 21, 2022). Counsel for the Defendants in *Rodden* represented that they would abide by the injunction in that case and so the motion was withdrawn by *Rodden* plaintiffs so as to conserve judicial resources.

All the *Rodden* Plaintiffs are currently protected by the instant injunction. They are all naturally immune to Covid-19 and the balance of conceivable harms from keeping the instant injunction is even more weighted to maintaining the injunction than it is with the Appellees. Further, the Court would be aided by the discussion of the nature of the vaccines, the benefits of the current injunction beyond the Appellees and the broader nature of the Appellants unlawful actions.

The Appellants were unreasonable in not consenting to this *amici* request. The rules allow seven days for response from the filing of the brief *amici* is supporting. Fed. R. App. 29 (a)(6). While the Court has shortened briefing it did not change that deadline. Moreover, the Fifth Circuit requires that counsel avoid repetition of facts and arguments made by the main brief and for *amici* to only focus on matters not adequately discussed in that brief. Fifth Circuit Rule 29.2. It was simply impossible to meet this rule and the Appellants' deadline for consent. *Rodden* Plaintiffs have attempted to do that in the accompanying brief after digesting

a seventy-page brief and writing the brief in two days. Further, no party's counsel authored any part of this brief and no person other than *amici* made a monetary contribution to fund its preparation or submission.

Accordingly, *Rodden* Plaintiffs respectfully requests leave to file the brief *amici curiae* that accompanies this motion.

/s/ John Vecchione
JOHN VECCHIONE
Counsel for Amicus Curiae

February 18, 2022

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface requirements of Rule 32(a)(5) and the typestyle requirements of Rule 32(a)(6) because this brief was prepared in 14-point Times New Roman, a proportionally spaced typeface, using Microsoft Word. See Fed. R. App. P. 29(a)(4), (b)(4), 32(g)(1). This brief complies with the type-volume limitation of Rule 32(g) because it contains 560 words, excluding the parts exempted under Rule 32(f).

/s/ Margaret A. Little

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2022, an electronic copy of the foregoing motion for leave to file a brief *amici curiae* was filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF filing system and that service will be accomplished using the appellate CM/ECF system.

/s/ John J. Vecchione