

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

THE STATE OF TENNESSEE; THE)
STATE OF INDIANA; THE STATE OF)
ALABAMA; THE STATE OF ALASKA;)
THE STATE OF ARIZONA; THE STATE)
OF ARKANSAS; THE STATE OF)
GEORGIA; THE STATE OF KANSAS;)
THE COMMONWEALTH OF)
KENTUCKY; THE STATE OF)
LOUISIANA; THE STATE OF)
MISSISSIPPI; THE STATE OF)
MISSOURI; THE STATE OF MONTANA;)
THE STATE OF NEBRASKA; THE)
STATE OF OHIO; THE STATE OF)
OKLAHOMA; THE STATE OF SOUTH)
CAROLINA; THE STATE OF SOUTH)
DAKOTA; THE STATE OF TEXAS; THE)
STATE OF UTAH; THE)
COMMONWEALTH OF VIRGINIA; THE)
STATE OF WEST VIRGINIA,)

Plaintiffs,)

v.)

UNITED STATES DEPARTMENT OF)
AGRICULTURE; THOMAS VILSACK, in)
his official capacity as Secretary of)
Agriculture; CINDY LONG, in her official)
capacity as Administrator of Food and)
Nutrition Service at the United States)
Department of Agriculture; ROBERTO)
CONTRERAS, in his official capacity as)
Director of the Food and Nutrition Service)
Civil Rights Division at the United States)
Department of Agriculture,)

Defendants.)

Case No. 3:22-cv-00257

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs are the States of Tennessee, Indiana, Alabama, Alaska, Arkansas, Arizona, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and West Virginia. The States move under Federal Rule of Civil Procedure 65(a) and 5 U.S.C. § 705 for an order preliminarily enjoining the U.S. Department of Agriculture (“USDA”), the Secretary of Agriculture, the Administrator of the USDA Food and Nutrition Service, the Director of the Food and Nutrition Service Civil Rights Division, their officers, agents, servants, employees, attorneys, and any other persons who are in active concert or participation with those individuals from enforcing the following documents against Plaintiff States and entities within those States:

- The USDA’s reinterpretation of Title IX. USDA, CRD 01-2022, Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update (May 5, 2022), <https://bit.ly/3NuXnSx> (“Memorandum”).
- The cover letter for the Memorandum issued by the USDA’s Food and Nutrition Service. USDA, Cover Letter to CRD 01-2022, Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update (May 5, 2022) (“Cover Letter”).
- The Memorandum’s “questions and answers” document issued by the USDA’s Food and Nutrition Service. USDA, CRD 02-2022, Questions and Answers Related to CRD 01-2022 Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update (May 5, 2022), <https://bit.ly/3yzKpyG> (“Memorandum Q&A”).
- The additional guidance on the publication of documents and notices related to the USDA’s reinterpretation of Title IX issued by the Department’s Food and Nutrition Service. USDA, Memorandum Regarding Revised Nondiscrimination Statement and “And Justice for All” Posters; Timelines and Guidance for Implementation (May 5, 2022) (“Supplemental Memorandum”) (collectively with Memorandum, Cover Letter, and Memorandum Q&A, “Memoranda”).
- The USDA’s adoption of its new nondiscrimination policy to be adopted in Supplemental Nutrition Assistance Program (“SNAP”) Federal-State Agreements. Supplemental Nutrition Assistance Program: Civil Rights Update to the Federal-State Agreement, 87 Fed. Reg. 35,855 (June 14, 2022), <https://bit.ly/3bDC4RA> (“Final Rule”).

As explained in the States’ accompanying memorandum, the States are likely to succeed on their claims alleging that the USDA’s Memoranda and Final Rule violate the Administrative Procedure Act (“APA”), 5 U.S.C. § 706. The Memoranda and Final Rule violate the APA’s notice-and-comment requirements; are arbitrary and capricious; conflict with Title IX; conflict with the Food and Nutrition Act; and violate the Spending Clause, the First Amendment, the Tenth Amendment, nondelegation doctrine, and separation-of-powers principles. Preliminary relief is necessary to prevent substantial irreparable harms—harms that include forcing States to choose between their sovereignty in enacting and enforcing their laws on the one hand and substantial federal funding on the other. Preliminary relief will serve the public interest by maintaining the status quo and preventing the unlawful new rules from disrupting SNAP programs, State-run schools, and other State agencies. *See Tennessee v. Dept. of Education*, No. 3:21-CV-308, 2022 WL 2791450 (E.D. Tenn. July 15, 2022).

Because the Memoranda and Final Rule imminently threaten federal funding for the States, the States request expedited briefing. The USDA, for example, requires Tennessee to adopt the new policy by August 15, 2022, or risk losing over \$6 million in SNAP Nutrition Educational Program funding for the next fiscal year. *See Niknejad Decl.* ¶¶ 10-12 (attached as Exhibit A). Accordingly, the States propose the following schedule so that this Court can rule on the States’ motion before the USDA’s August 15 deadline:

- **August 2, 2022:** Defendants file Response in Opposition to States’ Motion for Preliminary Injunction.
- **August 5, 2022:** States file Reply in Support of States’ Motion for Preliminary Injunction.

The States further request that this Court hear oral argument on the motion. Argument is warranted because this motion raises significant questions of statutory interpretation and constitutional law, and it implicates the interests of States, educational institutions, and others across the country. The States are available for oral argument during the week of **August 8, 2022**.

Finally, the States request that this Court exercise its discretion to waive the security requirement of Federal Rule of Civil Procedure 65(c).

Dated: July 26, 2022

Respectfully Submitted,

/s/ Brandon J. Smith (BPR # 037272)

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***Application for Pro Hac Admission Forthcoming**

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2022, a true and exact copy of the foregoing document was forward, by certified mail, to the parties identified below:

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