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ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

November 12, 2021

VIA U.S. MAIL

Honorable Doug Ducey
1700 West Washington
Phoenix, Arizona 85007

**Re: Action Needed To Protect Individual Liberties From Government
COVID-19 Vaccine Mandates**

Dear Governor Ducey:

As government issued COVID-19 Vaccine Mandates are both morally and legally wrong, I am writing with three action items needed to protect the individual liberties of all Arizonans at this time.

Most urgently, I am asking for your office's immediate and full cooperation to identify state contracts with federal agencies affected by the Biden administration's unlawful contractor mandate. My office argued this week on behalf of the state in federal court against the Biden administration's unlawful mandate that federal contractors require their employees – and even employees of subcontractors – to receive a COVID-19 vaccination. Your assistance in identifying the above contracts is essential, and time is of the essence, as the litigation on this matter will move forward on November 19.

Second, as you know, the Arizona Supreme Court ruled in *ASBA v. State* that three bills passed as part of the state budget – including Arizona's ban on COVID-19 vaccine mandates – are unconstitutional. The ruling was not based on the substance of the laws, but rather only on procedural requirements, leaving great uncertainty throughout our state. This situation is most pressing as we have been receiving complaints from employees at various levels of government that their employer is coercing them to receive a COVID-19 vaccination with threats of termination if they decline. Therefore I am urging you to coordinate with the Department of Health Services ("DHS") to issue emergency rules that protect Arizonans from COVID-19 vaccination mandates.

It is my opinion that your office has clear authority to stop such government mandates immediately by instructing DHS to exercise its primary jurisdiction under A.R.S. § 36-787(A) and issue an emergency rule that implements the directives

articulated in the struck-down laws, thereby preempting contrary requirements from political subdivisions.

Section 36-787(A) empowers DHS to “coordinate all matters pertaining to the public health emergency response of the state.” Moreover § 36-787(A)(1), (2) makes clear that the primary jurisdiction includes:

1. Planning and executing public health emergency assessment, mitigation, preparedness response and recovery for this state.
2. Coordinating public health emergency response among state, local and tribal authorities.

The purpose of any misguided COVID-19 vaccine mandates would be part of “executing public health emergency ... mitigation ... response and recovery for the state” and “public health emergency response among state, local and tribal authorities.” *See* A.R.S. § 36-787(A)(1)-(2). Because DHS has the power to exercise “primary jurisdiction” in these matters, it can establish a uniform response by all state, local, and tribal authorities. This was the subject of an informal Attorney General Opinion issued on March 30, 2021, *see* Attorney General Opinion I21-003 (R21-004, R21-005).^[1]

Finally, I urge you to call a special session of the Arizona Legislature to resurrect the provisions that were struck down by the courts on procedural grounds. A special session is necessary to ensure that commonsense policies are passed and take effect before the end of the 2022 Regular Session.

The commonsense laws that protect employees and students from government mandates that were struck down based on procedural requirements include:

- HB 2898 Section 12, adding A.R.S. § 15-342.05(B), which prohibits a school district or charter school from requiring a student or teacher to receive a vaccine for COVID-19 to participate in in-person instruction;
- SB 1825 Section 2, adding A.R.S. § 15-1660.05(A), which prohibits universities and community colleges from requiring students to obtain a COVID-19 vaccination or show proof of receiving a COVID-19 vaccination, among other prohibitions;
- SB 1824 Section 12, amending A.R.S. § 36-672, which clarifies whether vaccines subject to emergency use authorization can be required for school attendance and

^[1] Available at <https://www.azag.gov/opinions/i21-003-r21-004-r21-005>

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the conditions under which DHS may require a vaccination for school attendance;
and

- SB 1824 Section 13, adding A.R.S. § 36-681, which prohibits this state and any county, city, or town from establishing a COVID-19 vaccine passport or requiring any person to be vaccinated or a business to obtain proof of COVID-19 vaccination status.

Our constituents are expecting – and deserve – immediate attention to these substantial issues facing our state. I know we can all rise to meet these challenges.

Sincerely,

A handwritten signature in blue ink that reads "Mark Brnovich". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Mark Brnovich
Arizona Attorney General