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August 23, 2024

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: *Alaska, et al. v. Department of Education, et al.*, No. 24A11

Dear Mr. Harris:

I write to update the Court regarding developments in the U.S. Court of Appeals for the Tenth Circuit. Yesterday, the Tenth Circuit held proceedings in abeyance pending action by this Court or the U.S. Court of Appeals for the Eighth Circuit. *See* Attached Order. The Tenth Circuit also directed the parties to prepare monthly status reports regarding this application, the federal government's application (No. 24A173), and the Eighth Circuit appeal, and to promptly inform it "if a dispositive order is entered in any of the proceedings listed above, or if action by either the Supreme Court or the Eighth Circuit affects the stay entered by this court ... or the injunction entered by the Eighth Circuit" *Id.* at 1-2.

As I explained in my letter of August 10, 2024, so long as the Eighth Circuit's injunction is in place, Applicants do not require emergency relief. Yet as Texas, Alaska, and South Carolina set forth in their amicus brief in No. 24A173, if the Court were to vacate that injunction, Applicants would require emergency relief to prevent irreparable injury. The Court thus should reject the federal government's too-clever-by-half position that the Court should grant its application but deny this one.

Respectfully submitted,

/s/ Aaron L. Nielson
Aaron L. Nielson
Counsel for the State of Texas

cc: Joseph David Spate and Elizabeth B. Prelogar

Attachment A:

Order, *Alaska v. Dep't. of Education*,

Nos. 24-3089, 24-3094 (10th Cir.)

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 22, 2024

Christopher M. Wolpert
Clerk of Court

STATE OF ALASKA, et al.,

Plaintiffs - Appellees/Cross-
Appellants,

v.

UNITED STATES DEPARTMENT OF
EDUCATION, et al.,

Defendants - Appellants/Cross-
Appellees.

No. 24-3089
(D.C. No. 6:24-CV-01057-DDC-ADM)
(D. Kan.)

STATE OF MISSOURI, et al.,

Amici Curiae.

STATE OF ALASKA, et al.,

Plaintiffs - Appellants,

and

STATE OF KANSAS, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
EDUCATION, et al.,

Defendants - Appellees,

No. 24-3094
(D.C. No. 6:24-CV-01057-DDC-ADM)
(D. Kan.)

and

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

Defendant.

CATO INSTITUTE, et al.,

Amici Curiae.

ORDER

Before **TYMKOVICH, EBEL, and McHUGH**, Circuit Judges.

The United States Court of Appeals for the Eighth Circuit has enjoined pending appeal several major parts of the Final Rule at issue in the appeals before us. *See Missouri v. Biden*, Nos. 24-2332, 24-2351, 2024 WL 3738157, at *4 (8th Cir. Aug. 9, 2024). In light of the Eighth Circuit’s injunction, these appeals are abated until further order of the court.

During the abatement, the parties must file a joint status report every 30 days.

Each report must describe the status of the following proceedings:

- Appeal Nos. 24-2332 and 24-3251 pending before the United States Court of Appeals for the Eighth Circuit.
- The application pending before the Supreme Court of the United States in No. 24A11.
- The application pending before the Supreme Court of the United States in No. 24A173.

Further, the parties must file a joint status report as soon as practicable if a dispositive order is entered in any of the proceedings listed above, or if action by either the Supreme Court or the Eighth Circuit affects the stay entered by this court in No. 24-3089 or the injunction entered by the Eighth Circuit in Nos. 24-2332 and 24-3251.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. Wolpert', written over a horizontal line.

CHRISTOPHER M. WOLPERT, Clerk