



down to an assertion that this Court lacks jurisdiction to interpret and declare the effect of its own order. This is not and cannot be the law.

The Declaratory Judgment Act reads in relevant part:

In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

28 U.S.C. § 2201(a).

The Declaratory Judgment Act “confer[s] on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants.” *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). The Act ““should be liberally construed to achieve the objectives of the declaratory remedy.”” *Comm. on Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 82 (quoting *McDougald v. Jenson*, 786 F.2d 1465, 1481 (11th Cir. 1986)). The purpose of the Declaratory Judgment Act is to give litigants an opportunity to clarify their legal rights and relationships without waiting for a federal cause of action to accrue or be brought. *See, e.g., Severe Records, LLC v. Rich*, 658 F.3d 571, 580 (6th Cir. 2011); *Halkin v. Helms*, 690 F.2d 977, 1007 (D.C. Cir. 1982).

**1. Missouri Does Not Need to Identify an Independent Cause of Action to Seek Declaratory Relief.**

The Defendants suggest that plaintiffs seeking a declaratory judgment must identify an independent cause of action, separate and apart from the Declaratory Judgment Act, for this Court to have jurisdiction.

It is well-established that federal subject matter jurisdiction must exist independent of the Declaratory Judgment Act, and that an action for declaratory relief can be brought when either

the plaintiff or the defendant have an independent federal cause of action.<sup>1</sup> However, this does not mean an independent federal cause of action *must* exist for a litigant to pursue declaratory relief.

To the contrary, the text of the Act makes clear that the only requirements for a declaratory judgment action are that the complaint present an actual case or controversy that is ripe for review, over which the court has subject matter jurisdiction (*e.g.*, federal question subject matter jurisdiction under Section 1331). *Comm. on Oversight and Gov't. Reform, U.S. House of Representatives v. Holder*, 979 F. Supp. 2d 1, 22 (D.D.C. 2013). Some courts have “muddied the waters” by stating that the Declaratory Judgment Act “does not create ‘a cause of action,’”<sup>2</sup> but these cases should be read as “simply reiterating the well-established principle” that the Declaratory Judgment Act does not create substantive rights or “confer federal jurisdiction by itself.” *Id.* at 23. “Any other interpretation would be inconsistent with the plain text of the Act.” *Id.* at 23-24 (internal citations omitted). In a case considering these issues, this Court observed:

The parties point to no case—and the Court is aware of none—in which a court declined to hear a case requesting declaratory relief where subject matter jurisdiction was present and a plaintiff’s constitutional rights were arguably implicated simply because the plaintiff did not have an independent cause of action apart from the Act.

*Miers*, 558 F. Supp. 2d at 81-82.

In this case, the Defendants do not contest that Missouri presents an actual, ripe controversy that presents a federal question under Section 1331. As a result, this Court has

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<sup>1</sup> See, *e.g.*, *Severe Records*, 658 F.3d at 580 (quoting *Stuart Weitzman, LLC v. Microcomputer Res., Inc.*, 542 F.3d 859, 862 (11th Cir. 2008)); *Columbia Gas Transmission Corp. v. Drain*, 237 F.3d 366, 370 (4th Cir. 2001); *Household Bank v. JFS Group*, 320 F.3d 1249, 1255.

<sup>2</sup> See *Holder*, 979 F. Supp. 2d at 23 (citing *Buck v. Am. Airlines, Inc.*, 476 F.3d 29, 33 n. 3 (1st Cir. 2007); *Okpalobi v. Foster*, 244 F.3d 405, 423, n. 31 (5th Cir. 2001)).

jurisdiction to resolve this case and issue a declaratory judgment. The constitutional questions implicated in this case further counsel in favor of the Court exercising jurisdiction. Specifically, the effort of the federal executive branch to compel a State to take actions contrary to the order of an Article III federal court raises important questions related to separation of powers and federalism. Moreover, the Defendants' argument that this court lacks jurisdiction to interpret its own orders raises concerns under Article III of the Constitution.

**2. Missouri Could Bring Several Causes of Action Under Federal Law.**

Even if the Declaratory Judgment Act only allowed federal courts to gain anticipatory review of federal questions when an independent cause of action was available, the Court would still have jurisdiction to issue a declaratory judgment here because there are several independent federal causes of action under which Missouri could challenge the Defendants' failure to comply with this Court's injunction in *Texas Children's*.

First, the Administrative Procedure Act ("APA") provides plaintiffs with a cause of action to set aside any agency action "found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . [or] (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right . . . ." 5 U.S.C. § 706(2). The Defendants' continued application of the policy in FAQ No. 33 to Missouri is "not in accordance with law" because they have been enjoined "from enforcing, applying, or implementing FAQ No. 33."

This Court would also have jurisdiction to review a suit brought by Missouri challenging the disallowance of federal Medicaid funds that CMS threatened in the letter dated May 1, 2015. *See* 42 U.S.C. § 1316(e)(2)(C); Compl., Ex. 5. In the usual course of things, CMS would take a disallowance, and Missouri would appeal to the Departmental Appeals Board before seeking review in federal court. *See* § 1316(e)(2)(C). However, just as a prospective defendant

threatened with a federal lawsuit need not wait to be sued before pursuing declaratory relief in federal court, Missouri need not wait for CMS to formally issue a disallowance to adjudicate its rights under these circumstances. There is no set timeframe in which CMS must issue a disallowance, which means it could be years before the State and its safety-net hospitals know whether the hospital's revenues are subject to recoupment. The purpose of the Declaratory Judgment Act is to give litigants an opportunity to expeditiously clarify their rights, without having to endure this type of delay and uncertainty. *See, e.g., Severe Records*, 658 F.3d at 580.

Finally, if Missouri lacks any other remedy, it at least has the ability to pursue a mandamus action. *See* 28 U.S.C. § 1361. Mandamus relief may be granted to compel an officer or employee of the United States to act "if '(1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to plaintiff.'" *Walpin v. Corp. for Nat'l and Cmty. Serv.*, 718 F. Supp. 2d 18, 21 (D.D.C. 2010) (quoting *Council of and for the Blind of Del. Cnty. Valley v. Regan*, 709 F.2d 1521, 1533 (D.C. Cir.1983) (en banc)). The plain language of the injunction gives Missouri a right to be free from implementation of the policy in FAQ No. 33, and it imposes on CMS a clear duty to refrain from implementing FAQ No. 33.<sup>3</sup>

As we understand it, the Defendants' position is that this Court lacks jurisdiction to enforce a nationwide injunction when enforcement is sought by any person or entity not party to the case in which the injunction was issued (regardless of whether that injunction is preliminary or permanent). This would render a nationwide injunction essentially useless, as litigants seeking to enforce that injunction would be required to re-litigate the merits, resulting in

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<sup>3</sup> Should the Court conclude that Missouri's Complaint should affirmatively plead one or more of these causes of action to support jurisdiction, Missouri respectfully requests that this Court grant it leave to amend the Complaint accordingly.

unnecessary and repetitious litigation. *See Nat'l Mining Ass'n v. U.S. Army Corps of Engineers*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (finding that “a broad injunction obviates . . . repetitious filings”). The Defendants’ position allows the parties in the *Texas Children’s* litigation to seek to enforce the order, but those parties have no incentive to ensure that an injunction is enforced nationwide.

**B. The Court’s Injunction in *Texas Children’s* Applies to Missouri.**

The language of this Court’s Order plainly applies to Missouri. The section of the Order that states “Defendants are hereby ENJOINED from enforcing, applying, or implementing FAQ No. 33 pending further Order of this Court” is not limited to Texas or Washington and applies nationwide. *See Order, Texas Children’s*, No. 14-02060, ECF No. 19. Notably absent from the Defendants’ brief is any explanation for why this language does not encompass Missouri. The Defendants instead contend that the injunction does not apply to Missouri because “[i]t is clear that Missouri is not a party in *Texas Children’s*.” (Mot. at 11.) This argument misses the mark. The critical issue is that all of the *Defendants* are parties to the *Texas Children’s* litigation and this Court enjoined them from “implementing FAQ No. 33.” *See Order, Texas Children’s*, No. 14-02060, ECF No. 19.

The Defendants’ argument that courts should generally issue narrow injunctions is irrelevant. There is no question that this Court had the authority to enter a nationwide injunction in *Texas Children’s* that enjoined the Defendants from implementing FAQ No. 33. Indeed, “district courts enjoy broad discretion in awarding injunctive relief.” *Nat'l Mining Ass'n*, 145 F.3d at 1408. This broad discretion extends to granting a nationwide injunction in response to a preliminary injunction. *Fox Television Stations, Inc. v. FilmOn X LLC*, 966 F. Supp. 2d 30, 52 (D.D.C. 2013) (“the Court will grant Plaintiffs’ request for nationwide relief except as to the

Second Circuit”); *see also State v. United States Dep’t of the Interior*, 2015 WL 5845145, at \*23 n.52 (D. Wyo. Sept. 30, 2015) (entering nationwide injunction against federal agency rule on hydraulic fracturing in response to motion for preliminary injunction).

To be sure, certain courts have concluded that based on the unique circumstances of other cases, nationwide injunctions are not always appropriate. In *Texas Children’s*, however, the Court enjoined the Defendants from implementing FAQ No. 33, without limiting the scope of the injunction to only Washington and Texas. Because this Court has the authority to enter a nationwide injunction, the Defendants are enjoined from requiring Missouri to comply with FAQ No. 33 based on a plain reading of the *Texas Children’s* Order.

### **III. Conclusion**

For the foregoing reasons, this Court should enter summary judgment in favor of Missouri, deny the Defendants’ motion to dismiss, and issue a declaratory judgment that the *Texas Children’s* Order applies to Missouri.

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Respectfully submitted,

/s/ Caroline M. Brown  
Caroline M. Brown (Bar No. 438342)  
Philip J. Peisch (Bar No. 1005423)  
Jonathan L. Cloar (Bar No. 1018494)  
Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001  
+1 202 662 6000  
cbrown@cov.com  
ppeisch@cov.com  
jcloar@cov.com  
*Attorney for Plaintiff*  
*Missouri Department of Social Services*