



Federal Update: SCOTUS Blocks OSHA Emergency Temporary Standard

ACEC/NC Members,

The US Supreme Court has ruled in favor of the ETS opponent's request for an *emergency injunction*. The full ruling can be found [here](#). Below represents some of the insights and excerpts from the decision. In short, they have reinstated the 6th Circuit's stay, while they work towards a final decision. They have written clearly that the six Justices that have ruled on the emergency stay will rule similarly on the final decision.

OSHA's COVID-19 Vaccination and Testing; Emergency Temporary Standard is stayed pending disposition of the applicants' petitions for review in the United States Court of Appeals for the Sixth Circuit and disposition of the applicants' petitions for writs of certiorari, if such writs are timely sought. Should the petitions for writs of certiorari be denied, this order shall terminate automatically. In the event the petitions for writs of certiorari are granted, the order shall terminate upon the sending down of the judgment of this Court.

Many States, businesses, and nonprofit organizations challenged OSHA's rule in Courts of Appeals across the country. The Fifth Circuit initially entered a stay. But when the cases were consolidated before the Sixth Circuit, that court lifted the stay and allowed OSHA's rule to take effect. Applicants now seek emergency relief from this Court, arguing that OSHA's mandate exceeds its statutory authority and is otherwise unlawful. Agreeing that applicants are likely to prevail, we grant their applications and stay the rule.

The Sixth Circuit concluded that a stay of the rule was not justified. We disagree.

Applicants are likely to succeed on the merits of their claim that the Secretary lacked authority to impose the mandate. Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided. The Secretary has ordered 84 million Americans to either obtain a COVID-19 vaccine or undergo weekly medical testing at their own expense. This is no "everyday exercise of federal power." It is instead a significant encroachment into the lives—and health—of a vast number of employees. "We expect Congress to speak clearly when

authorizing an agency to exercise powers of vast economic and political significance.”

Although Congress has indisputably given OSHA the power to regulate occupational dangers, it has not given that agency the power to regulate public health more broadly. Requiring the vaccination of 84 million Americans, selected simply because they work for employers with more than 100 employees, certainly falls in the latter category.

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ACEC/NC is premier organization in North Carolina that represents the business interests of the engineering industry in our state. ACEC/NC's mission is to promote the business interest of engineer companies by providing legislative advocacy and business services.



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