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NFIB Files Lawsuit Against OSHA's Vaccine Mandate on America's Businesses

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NFIB files petition for review at the U.S. Fifth Circuit Court of Appeals

WASHINGTON, D.C. (Nov. 9, 2021) – NFIB filed a legal challenge (<https://assets.nfib.com/nfibcom/OSHA-ETS-Stay-Motion3.pdf>) today against the Biden Administration's emergency temporary standard, which would mandate businesses with 100 or more employees require workers take the COVID-19 vaccine or undergo weekly testing and wear masks while at work. NFIB filed a petition for review at the United States Court of Appeals for the Fifth Circuit arguing the Court should stay OSHA's "COVID-19 Vaccination and Testing; Emergency Temporary Standard."

"The small business economy is fragile, and owners continue to manage several business challenges regarding staffing and supply chain disruptions," said Karen Harned, Executive Director of NFIB's Small Business Legal Center. "This mandate only increases those challenges and threatens to cause an enormous financial loss. Ultimately, the mandate restricts the freedom small business owners depend on to run their businesses and is a clear example of administrative overreach."

In the challenge, NFIB argues that OSHA needed to use the typical notice-and-comment procedure for the mandate to gather public input, rather than depending on a rarely used, and ill-defined "emergency" provision of the *Occupational Health and Safety Act* to immediately implement the mandate. NFIB also argues that a nationwide COVID-19 vaccine and testing mandate, monitoring, and database is fundamentally a policy decision that should be left to Congress. Lastly, NFIB argues the mandate will result in unrecoverable compliance costs, lost profits, lost sales, and further exacerbate the labor shortage for small businesses.

NFIB filed the challenge with the following business associations: Mississippi Trucking Association, Texas Trucking Association, Louisiana Motor Transport Association, American Trucking Associations, National Association of Wholesale-Distributors, FMI – The Food Industry Association, International Warehouse & Logistics Association, National Association of Convenience Stores, International Foodservices Distributors Association, and National Retail Federation.

NFIB has opposed (<https://www.nfib.com/content/press-release/coronavirus/nfib-statement-on-oshas-new-emergency-temporary-standard/>) the rule and previously sent a letter (<https://assets.nfib.com/nfibcom/NFIB-Letter-David-Addington-9.15.21.pdf>) to Secretary of Labor Marty Walsh regarding small business concerns.

The NFIB Small Business Legal Center protects the rights of small business owners in the nation's courts. NFIB is currently active in more than 40 cases in

federal and state courts across the country and in the U.S. Supreme Court.

Get to know NFIB

NFIB is a member-driven organization advocating on behalf of small and independent businesses nationwide.

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