

Nos. 21A244, 21A247

In the **Supreme Court of the United States**

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NATIONAL FEDERATION OF INDEPENDENT BUSINESS, ET AL., *Applicants*,  
v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET AL.,  
*Respondents*.

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OHIO, ET AL., *Applicants*,  
v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET AL.,  
*Respondents*.

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**ON APPLICATION FOR STAY OF ADMINISTRATIVE ACTION AND  
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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**MOTION FOR LEAVE TO FILE; AND AMICI BRIEF OF TWO UNNAMED  
WORKERS IN SUPPORT OF APPLICATION FOR STAY, GRANT OF  
CERTIORARI, AND REVERSAL**

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## MOTION TO FILE BRIEF AMICI CURIAE

Amici are two unnamed American workers who are unvaccinated for health reasons including their strong natural immunity to COVID from prior exposure. Amici are seeking employment with companies affected by OSHA's vaccine mandate and now move on an emergency basis for leave to file their attached Amicus Brief in support of Petitioners' emergency motion for a stay and certiorari and for reversal of the judgment of the Sixth Circuit.

Because of the urgent nature of Petitioners' pending applications, Amici have not had an opportunity to seek the parties' consent to the filing of the attached Amicus Brief. Nor was it practical to do so. The potential parties in these and pending related cases are numerous, and the time is not sufficient on this emergency application.

The attached Amicus Brief is short, focuses on a single issue, will not prejudice any party, will assist this Court, and will give expression to the interests of Amici and millions of similarly situated job-seeking Americans nation-wide.

This Court should grant this emergency motion, permit the filing of the attached emergency Amicus Brief, grant a stay and certiorari, and reverse the judgment of the Sixth Circuit.

Respectfully submitted,

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## **INTEREST OF AMICI**

As mentioned in the motion, Amici are two unnamed American workers who are unvaccinated for health reasons including their strong natural immunity to COVID from prior exposure. Amici are seeking employment with companies which are affected by OSHA's vaccine mandate and thus are prejudiced and limited in their job searches by the ruling of the Sixth Circuit upholding the vaccine requirement. Millions of job-seeking Americans nation-wide are in situations similar to those of Amici. Amici cannot reasonably disclose their identities because of the extreme political volatility surrounding the vaccine issue and the likely repercussions Amici will suffer in their present and future employment if their identities are disclosed, especially in the cancel culture which pervades contemporary American life. <sup>1</sup>

## **SUMMARY OF ARGUMENT**

OSHA's vaccine mandate exceeds the scope of its Congressionally delegated authority because the mandate lies beyond the scope of OSHA's typical administrative regulations which Congress entrusted to it – much like the CDC's recent rent and mortgage moratorium which was held to have exceeded the CDC's authority for the same reason. The administrative excess in both cases is the same.

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<sup>1</sup> No counsel or other representative or agent of any party in these cases authored any part of this Amicus Brief or exercised any form of control or approval over this Amicus Brief or any portion of it. No person or entity, aside from Amici or their counsel, made a monetary contribution to the preparation or submission of this Amicus Brief.

In addition, the draconian and frequent adverse health effects caused by the COVID vaccine, including the unusually high number of deaths it causes, place it beyond the scope of typical Congressional delegation and require that Congress itself address this critical issue. For this reason also, OSHA's vaccine mandate is beyond its administrative authority.

### **ARGUMENT**

There are two reasons for reversing OSHA's vaccine mandate and holding, at least at the federal level, that the vaccine mandate must come from Congress, not from an administrative agency. It is beyond OSHA's power.

First, OSHA's vaccine mandate exceeds the scope of OSHA's usual workplace authority. The mandated vaccine does not guard against any danger unique to the workplace. Nor do its effects stop when the worker goes home. The worker who is vaccinated is stuck with its effects forever – long after the work day is over and literally for the rest of his/her life – unlike the typical OSHA mandate which ceases to affect the worker when s/he exits the factory door.

The excess in OSHA's vaccine mandate, beyond the scope of its typical workplace authority, mirrors the CDC's recent excess in dealing with the same COVID pandemic. The CDC had imposed an eviction moratorium benefiting rent-paying tenants during the pandemic which this Court struck down as beyond the scope of the CDC's usual health mandates and thus beyond the authority Congress entrusted to it. *Alabama Association of Realtors v. Dept. of Health and Human Services*, 141 S.Ct. 2485, 2488 (2021) (“This downstream connection between

eviction and the interstate spread of disease [in the CDC regulation] is markedly different from the direct targeting of disease that characterizes the measures identified in the statute [for CDC to regulate]”).

*Alabama Realtors* controls here. Just as the CDC-imposed eviction moratorium exceeded the scope of the typical CDC health mandate and thus exceeded the CDC’s authority delegated to it by Congress, *id.*, so too the OSHA-imposed vaccine mandate exceeds the scope of OSHA’s typical workplace authority and thus exceeds the authority it enjoys by virtue of Congressional delegation. The two situations are mirror images – exceeding the scope of administrative authority granted by Congress as defined by the usual scope of administrative regulation and therefore beyond the authority that Congress intended to delegate. *Alabama Realtors, supra.*

This Court’s invalidation of the CDC’s eviction moratorium in *Alabama Realtors* provides a model for the same regulatory invalidation here.

Second, the ***draconian health risks posed by the COVID vaccine itself*** underscore the extreme and unusual nature of the COVID vaccine mandate which reserve the authority for its enactment to Congress alone absent an express Congressional delegation which is lacking here. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000) (“extraordinary” and “major” situations are reserved for Congress); *Alabama Realtors*, 141 S.Ct. at 2489 (“We expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic

and political significance”). The health risks of the COVID vaccine, including the large numbers of deaths it causes, are draconian and “extraordinary”:

- **Government Report: COVID Vaccines Caused Thousands of Deaths:** The government’s own VAERS (Vaccine Adverse Event Reporting System) report indicates over 21,000 deaths caused by the COVID vaccine, <https://www.medalerts.org/vaersdb/findfield.php?TABLE=ON&GROUP1=AGE&EVENTS=ON&VAX=COVID19&DIED=Yes> <sup>2</sup>
- **Government Report: COVID Vaccine Deaths Exceed Combined Total Deaths for All Other Vaccines:** The number of COVID-vaccine deaths in one year – conservatively using the government’s figure (21,000+ *supra*) – exceeds the 30-year combined total of all vaccine deaths from all vaccines for all other diseases since 1990; *see VAERS graphs* in *American Thinker*, Dec. 9, 2021, *VAERS Data Indicates the Covid Vaccines Have Killed at Least 140,000 People [disputing government figure 21,000+]* [https://www.americanthinker.com/articles/2021/12/vaers\\_data\\_indicates\\_the\\_covid\\_vaccines\\_have\\_killed\\_at\\_least\\_140000\\_americans.html](https://www.americanthinker.com/articles/2021/12/vaers_data_indicates_the_covid_vaccines_have_killed_at_least_140000_americans.html)
- **Unknwn Territory: COVID Vaccines Unlike Other Anti-Viral Vaccines:** COVID vaccines are unique (and unpredictable in long-term effects) among anti-viral vaccines in that they consist of genetic mRNA molecules never before tested long-term on humans, rather than the traditional anti-viral vaccines which consist of attenuated virus molecules that trigger an immune response specific to the virus actually injected; *Nature*, Sept. 14, 2021, *The Tangled History of mRNA Vaccines*, <https://www.nature.com/articles/d41586-021-02483-w>
- **Report: COVID Vaccines Cause Blood Clots/Fail D-dimer Tesst:** The unique mRNA nature of COVID vaccines (unlike other anti-viral vaccines) causes up to 62% of vaccinated people to fail the D-dimer test, meaning their red blood cells become sticky, rather than smooth, leading to blood clots and potentially large numbers of deaths over time, <https://contraelencierro.blogspot.com/2021/07/dr-hoffe-en-el-62-de-los-vacunados-hay.html>

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• <sup>2</sup> This is the VAERS figure (21,000+) the federal government reports. Commentators criticize its under-reporting and estimate the actual number of COVID-vaccine deaths at 140,000. *American Thinker*, Dec. 9, 2021, *VAERS Data Indicates the Covid Vaccines Have Killed at Least 140,000 People*, [www.americanthinker.com/articles/2021/12/vaers\\_data\\_indicates\\_the\\_covid\\_vaccines\\_have\\_killed\\_at\\_least\\_140000\\_americans.html](https://www.americanthinker.com/articles/2021/12/vaers_data_indicates_the_covid_vaccines_have_killed_at_least_140000_americans.html)

- **Inventor’s Remorse: mRNA Inventor Now Against Vaccine Technology He Invented:** Dr. Robert Malone, inventor of the mRNA technology used in COVID vaccines, now strongly opposes its use especially in children, *WSAU-TV*, Dec. 16, 2021, *COVID Shot Irreversible and Potentially Permanently Damaging to Children*, <https://wsau.com/2021/12/16/leading-researcherinventor-of-the-mrna-vaccine-dont-vaccinate-your-children/>
- **Report: COVID Vaccines Cause Cancer, Shingles, Herpes:** The unique mRNA component of COVID vaccines, as a foreign substance, generates an immune rejection by the body which the mRNA vaccines overcome by reducing the body’s immune response, leading to cancers, shingles and herpes among vaccinated people; *see, e.g.*, doctor’s report in *Lifestyle*, Sept. 13, 2021, *Idaho Doctor Reports a “20 Times Increase” of Cancer Among Vaccinated Patients*, <https://www.lifesitenews.com/news/idaho-doctor-reports-a-20-times-increase-of-cancer-in-vaccinated-patients/>
- **Report: COVID Vaccines Cause Heart Attacks, Blood Clots: See** *World Tribune*, Dec. 24., 2021, *California Nurses Report “Overwhelming” Number of Heart Attacks, Clotting in Vaccinated Patients*, [https://www.worldtribune.com/california-nurses-report-overwhelming-number-of-heart-attacks-clotting-in-vaccinated-patients/?utm\\_source=wnd&utm\\_medium=wnd&utm\\_campaign=syndicated](https://www.worldtribune.com/california-nurses-report-overwhelming-number-of-heart-attacks-clotting-in-vaccinated-patients/?utm_source=wnd&utm_medium=wnd&utm_campaign=syndicated)
- **Government Report: COVID Vaccines Fail to Prevent Virus Transmission:** The CDC admits the COVID vaccines do not prevent one from contracting or transmitting the COVID virus; *Statement from CDC Director Rochelle P. Walensky, MD, MPH, on Today’s MMWR*, July 30, 2021, <https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html>; *see also* [https://www.realclearpolitics.com/video/2021/08/06/cdc\\_director\\_vaccines\\_no\\_longer\\_prevent\\_you\\_from\\_spreading\\_covid.html#!](https://www.realclearpolitics.com/video/2021/08/06/cdc_director_vaccines_no_longer_prevent_you_from_spreading_covid.html#!) raising serious questions about the public-health benefits of COVID vaccines in preventing transmission of the virus to others;
- **Report: COVID-Vaccine Immunity Much Less Effective Than Natural Immunity:** An Israeli study of several hundred thousand people, the largest of its kind, showed that COVID-vaccine immunity provided far less protection than natural immunity – that vaccinated people with vaccine immunity were 6-to-13 times more likely than unvaccinated people with natural immunity to get the COVID virus, 27 times more likely to get symptoms, and 8 times more likely to be hospitalized. *Israel National News*, Aug. 29, 2021, *Israeli Study: Natural Immunity Gives Better Protection Than COVID Shot*, <https://www.israelnationalnews.com/news/312637>

- **Government Reports: Most COVID Deaths and Hospitalizations are Among the Vaccinated:** According to governmental reports:
  - in the United Kingdom, vaccinated are 3-times more likely to die of COVID than unvaccinated, [https://humansarefree.com/2021/06/latest-uk-data-vaccinated-people-3-times-more-likely-to-die-from-delta-variant\\_than\\_unvaccinated.html](https://humansarefree.com/2021/06/latest-uk-data-vaccinated-people-3-times-more-likely-to-die-from-delta-variant_than_unvaccinated.html)
  - in Australia and Israel, 95% & 99% of patients hospitalized with COVID were fully vaccinated, <https://newsrescue.com/australia-israel-report-95-99-hospitalized-fully-vaccinated/>
  - in the State of Vermont, 76% of people dying from COVID were fully vaccinated, <https://citizenfreepress.com/column-3/vermont-76-of-september-covid-deaths-were-fully-vaccinated/>

The “extraordinary” and unusual nature of COVID vaccines, their draconian effects, and their novel technology never tested for long-term effects on humans together underscore their exception to the usual allowance of administrative regulation – even if OSHA ever had authority in this area – and that the vaccine requirement in the private workplace lies beyond the intent of any existing Congressional delegation. *FDA, supra*. At the federal level, this is an area which Congress alone may regulate and which OSHA’s regulations have transgressed.

## CONCLUSION

This Court should void OSHA’s vaccine mandate, grant a stay and certiorari, and reverse the judgment of the Sixth Circuit.

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