

Flood of Appeals Hit U.S. Supreme Court Over OSHA COVID Vaccine Mandate for Private Businesses



Supreme Court Justice Brett Kavanaugh on Monday asked the Biden administration to respond to a flood of appeals of a Sixth Circuit ruling that dissolved an injunction, allowing the Occupational Safety and Health Administration (OSHA) to move forward with its vaccine-or-testing mandate for large private businesses.

Those asking the Supreme Court for an injunction include 27 states, private businesses, [religious groups](#) and national industry associations such as the National Retail Federation, the American Trucking Associations and the National Federation of Independent Business.

The appeals were submitted to Kavanaugh because he is assigned to handle applications from the U.S. Court of Appeals for the Sixth Circuit, although he can refer the issue to the full

court for consideration.

The petitioners are asking the Supreme Court to once again stay the enforcement of OSHA's vaccine mandate until the sixth circuit renders a full decision on the merits of the case. They also requested the justices [take up the case](#) before final rulings have been issued in the lower appeals court.

Kavanaugh set a deadline of 4:00 p.m Dec. 30, for the Biden administration to respond to the appeals.

"This case is finally where it belongs: the Supreme Court. OSHA has threatened to start punishing employers like our clients starting on January 10, and we're grateful the court has ordered a briefing schedule that will allow for resolution of our petition before that deadline," Daniel Suhr, managing attorney at the [Liberty Justice Center](#), told [The Epoch Times](#) in an email.

"We're very pleased with Justice Kavanaugh's quick response and are confident that the court will act quickly to ensure legal predictability before the deadline," John Bursch, a lawyer for [Alliance Defending Freedom](#), added.

The Supreme Court is not considering the full validity of the OSHA vaccine mandate. It is only considering whether to grant a temporary injunction, preventing the mandate from going into effect while the case moves forward in the lower courts.

If an injunction isn't granted, millions of workers in businesses across the country will be subjected to the mandate and forced to either get vaccinated or submit to weekly COVID testing.

Fifth Circuit Court of Appeals

initially halted the mandate

The Fifth Circuit Court of Appeals [initially halted the mandate](#), which applies to businesses with more than 100 employees. In a [22-page opinion](#), the three-judge panel on the U.S. Court of Appeals for the Fifth Circuit unanimously held that a group of challengers to the COVID vaccine mandate, issued by the Biden administration, was likely to succeed and barred the government from enforcing the mandate.

In the ruling, Judge Kurt Engelhardt said petitioners' challenges to the mandate showed a great likelihood of success on the merits, weighing critically in favor of a stay – and if not stayed, the mandate would cause irreparable harm, as it “threatens to substantially burden the liberty interests of reluctant individual recipients put to a choice between their job(s) and their jab(s).”

Engelhardt further said companies seeking a stay in the case would also be irreparably harmed if it were not granted “whether by the business and financial effects of a lost or suspended employee, compliance and monitoring, costs associated with the mandate, the diversion of resources necessitated by the mandate or by OSHA’s plan to impose stiff financial penalties on companies that refuse to punish or test unwilling employees.”

By contrast, the panel said a stay will do OSHA no harm whatsoever, and that any interest OSHA may claim in enforcing an unlawful (and likely unconstitutional) ETS [emergency temporary standard] is illegitimate.

Sixth Circuit lifted Fifth Circuit’s stay on vaccine mandate

Due to a large number of cases against the mandate, the Sixth Circuit was chosen via a lottery system to hear a consolidated

appeal of the cases.

The Sixth Circuit overruled the Fifth Circuit, prompting businesses, trade associations and religious groups who sued against the mandate to ask the Supreme Court to step in and block it again.

In a [57-page opinion](#), the sixth circuit adopted a completely different view of OSHA's authority, saying the agency has "clear and concise authority to regulate viruses" and thus, impose a vaccine mandate.

The court relied heavily on OSHA's argument, which was based on faulty COVID data and said the agency "has demonstrated the pervasive danger that COVID-19 poses to workers—unvaccinated workers in particular—in their workplaces."

"[...] Petitioners cannot establish a likelihood of success on the merits, and this reason alone is sufficient to dissolve the stay," the court said. "We also conclude, however, that Petitioners have not shown that any injury from lifting the stay outweighs the injuries to the Government and the public interest."

OSHA said it was "gratified" by the ruling and would begin imposing the mandate on Jan. 10, 2022.