



# ILA-USMX JOINT SAFETY COMMITTEE

## OSH ALERT 2022-02 [13 January 2022]

### U.S. Supreme Court Stays OSHA ETS

In a 9 to 3 decision split down ideological lines, the U.S. Supreme Court (SCOTUS) ruled this afternoon to impose a stay upon OSHA’s emergency temporary standard dealing with the vaccination/testing & masking of employees at workplaces employing 100 or more workers.

A link to the SCOTUS decision appears below:

<https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:af17d9b3-79c8-45bc-a167-b9b00277959b>

The Majority’s decision appears largely based upon the “Greater Powers” doctrine, which essentially holds that some implied powers [in this case of the OSH Act], even if necessary to effectuate an enumerated powers of a Federal agency [OSHA], are not “proper” because of the degree of their importance.

So, in sum, the Majority’s holding is that requiring the actions of employers to comply with the ETS is an overreach for an agency like OSHA to attempt. Such weighty requirements, according to the Majority, are better left to the individual States and or Congress.

The opinions of the Majority as well as that of the Dissenting Justices are worth reading.

(file format)      Case no: 595 U. S. \_\_\_\_ (2022)      1

Per Curiam

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**SUPREME COURT OF THE UNITED STATES**

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Nos. 21A244 and 21A247

NATIONAL FEDERATION OF INDEPENDENT  
BUSINESS, ET AL., APPLICANTS

21A244      v.  
DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY  
AND HEALTH ADMINISTRATION, ET AL.

OHIO, ET AL., APPLICANTS

21A247      v.  
DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY  
AND HEALTH ADMINISTRATION, ET AL.

ON APPLICATIONS FOR STAYS

[January 13, 2022]

PER CURIAM

The Secretary of Labor, acting through the Occupational Safety and Health Administration, recently enacted a vaccine mandate for much of the Nation’s work force. The mandate, which employers must enforce, applies to roughly 84 million workers, covering virtually all employers with at least 100 employees. It requires that covered workers receive a COVID-19 vaccine, and it pre-empts contrary state laws. The only exception is for workers who obtain a medical test each week at their own expense and on their own time, and also wear a mask each workday. OSHA has never before imposed such a mandate. Nor has Congress. Indeed, although Congress has enacted significant legislation addressing the COVID-19 pandemic, it has declined to enact

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