

Lead Case No. 21-7000
(Member Case Nos. 21-4033, 21-4088, 21-4097)

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

IN RE: MCP No. 165; OSHA RULE
ON COVID-19 VACCINATION AND TESTING

On Petitions for Review of an Emergency Temporary Standard from the
Occupational Safety and Health Administration.

**OPPOSITION TO RESPONDENTS' MOTION TO AMEND
SCHEDULE FOR STAY BRIEFING AND TO SET SCHEDULE
FOR MERITS BRIEFING**

The Southern Baptist Theological Seminary, Asbury Theological Seminary, Sioux Falls Catholic Schools d/b/a Bishop O’Gorman Catholic Schools, The King’s Academy, Cambridge Christian School, Home School Legal Defense Association, Inc., and Christian Employers Alliance (“Religious Petitioners”) respectfully request that the Court deny the government’s last-minute maneuver to alter the briefing regarding its motion to dissolve the Fifth Circuit’s stay. The Court should also deny the government’s premature attempt to dictate what merits briefing ought to look like. The Court should first decide the pending *en banc* petitions, and the parties should have the chance to confer about the key procedural issues.

1. Religious Petitioners regard the Court’s re-filing of the same briefing schedule on November 24, 2021 to moot the government’s

request to change the briefing schedule on its motion to dissolve stay. *See* ECF No. 141. However, for the sake of completeness, if the Court were to entertain the motion, it should be denied.

2. The government's request regarding merits briefing schedule should also be denied. To be sure, Religious Petitioners agree that a merits scheduling order and a case management order are necessary. However, the government seeks to prematurely short-circuit petitioners' (and the Court's) ability to weigh in on *key* procedural issues. There are currently multiple pending *en banc* petitions. To the extent that the full Court will hear this case, the full Court should have a say in setting these procedural roadmaps. And the parties have not yet had the opportunity to work out the necessary procedural and case management roadmaps. Although the government makes some cursory suggestions, ECF No. 131, at 3, *petitioners* should have an adequate time to confer and weigh in on these issues. The Court could also solicit proposals from the parties and then issue a case management order.

3. It would be highly prejudicial for the government to unilaterally dictate how petitioners should seek to protect their rights and interests from the government's unlawful mandate. This litigation is the only chance for these petitioners to seek the Court's review of OSHA's overreach before the heavy hammer of enforcement would fall on the regulated entities.

4. To the extent that the Court wishes to set a schedule for merits briefing now, Religious Petitioners agree with the Business Association

Petitioners' proposal, ECF No. 145: (1) Petitioners' opening briefs due on January 21, 2022; (2) Respondents' brief due on February 4, 2022; (3) Intervenors in support of Respondents' brief due on February 11, 2022; and (4) Petitioners' reply briefs due on February 25, 2022.

CONCLUSION

The Court should deny the government's motion.

Respectfully submitted,

/s/ Ryan L. Bangert

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Dated: November 29, 2021

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b), this document contains 426 words according to the word count function of Microsoft Word 365.

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/s/ Ryan L. Bangert

Date: November 29, 2021

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2021, a true and accurate copy of the foregoing was electronically filed with the Court using the CM/ECF system. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

/s/ Ryan L. Bangert

Date: November 29, 2021