

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 21-3066

THE STATE OF INDIANA,

Petitioner,

v.

OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION, UNITED STATES
DEPARTMENT OF LABOR,

Respondent.

**THE STATE OF INDIANA'S STATEMENT OF POSITION IN LIGHT OF
THE FIFTH CIRCUIT'S DECISION IN *BST HOLDINGS, LLC V. OSHA***

In response to the Court's November 9th, 2021 order, the State of Indiana hereby submits this statement of its position in light of the Fifth Circuit's decision in *BST Holdings, LLC v. OSHA*, No. 21-60845 (5th Cir. Nov. 6, 2021).

Federal Rule of Appellate Procedure 18 and 28 U.S.C. Section 2112 permit a court of appeals to stay an agency order pending judicial review. On November 5, 2021, the State of Indiana filed a petition to review and motion to stay OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking, 86 Fed. Reg. 61,402 (Nov. 5, 2021), in this Court. On the same day, the petitioners in *BST Holdings, LLC v. OSHA* filed their own petition for review and motion to stay the same standard in the Fifth Circuit. On November 6th, 2021, the Fifth Circuit

issued an order stating that, “[b]ecause the petitions give cause to believe there are grave statutory and constitutional issues with the Mandate, the Mandate is hereby STAYED pending further action by this court.”

Under 28 U.S.C. Section 2112, any court of appeals in which a petition for review is filed “may, to the extent authorized by law, stay the effective date of the order.” 28 U.S.C. § 2112(a)(3). Pursuant to this authority, the Fifth Circuit stayed all “enforcement of the Occupational Safety and Health Administration’s November 5, 2021 Emergency Temporary Standard,” and nothing in the Fifth Circuit’s order suggests that the order’s effect is limited in scope, geographically or otherwise. Accordingly, the State understands the Fifth Circuit’s order to stay enforcement of OSHA’s mandate throughout the United States.

Nevertheless, the United States may take a different position as to the scope or effect of the Fifth Circuit’s order. And for this reason, the State respectfully requests that this Court proceed to consideration of its stay motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit using the CM/ECF system.

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