

# CORONAVIRUS

## WAR ROOM

### WHY THE LAWSUIT TO BLOCK THE OSHA VACCINE OR TEST STANDARD IS LEGALLY FLAWED

#### COVID-19 Is A Grave Occupational Threat

- COVID 19 is the [single largest occupational health crisis](#) since OSHA was created.
- Yet, the Fifth Circuit and some of the challengers doubt whether COVID even qualifies as a “grave danger,” despite a death toll of more than 760,000 Americans, with [80,000](#) new infections each day. By this standard, nothing would qualify as a grave danger.

#### OSHA Is Well Within Its Authority To Issue Emergency Rules

- OSHA has [broad authority](#) to protect the health and safety of workers and has emergency powers in the event “employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards.”
- Viruses clearly qualify. In the past, when infectious diseases threatened the health or lives of workers, OSHA has stepped in to provide guidance and prevent illness. In [1991](#), under Republican President George H.W. Bush, OSHA issued a requirement to limit exposure to Hepatitis B and HIV/AIDS in occupational settings through a combination of methods including Hepatitis B vaccination and use of personal protective equipment.
- OSHA issued an [ETS to protect health care workers](#) from COVID 19 in June, and that was NOT contested by employers.

#### OSHA’s Rule Is Designed to Work in the Workplace

- The Fifth Circuit states OSHA’s rule is too broad in its coverage, providing the example that the same rule covers both the lonely janitor or truck driver, as well as workers in congested work environments, like meatpacking plants. The Fifth Circuit maintains these individuals have different risks, but OSHA’s rule [exempts](#) workers who do not come into contact with coworkers or customers and those that work outdoors.

#### The Fifth Circuit Acted Inappropriately

- The Fifth Circuit did not even mention — much less substantively address — public health in discussing whether or not it was in the “public interest” to stay the standard.
- When an OSHA rule is challenged in more than one federal circuit, cases are typically consolidated and presented before a single federal circuit court, which is chosen at random.
  - OSHA’s vaccine or testing requirement doesn’t go into effect until January 4th, making it suspect that the Fifth Circuit felt it necessary to stay the rule several months in advance.
  - Together, the Fifth Circuit’s actions raise questions about the race to stay, suggesting they wished to stop the rule from going into effect before the case was removed from the Fifth Circuit.

## This Case Will Negatively Impact Far More Than COVID Vaccines

- Right-wing groups are using this lawsuit in an attempt to restrict Congress' power to delegate authority to agencies like OSHA, and risking the health and safety of millions of workers in the process.