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November 19, 2021

Deborah S. Hunt, Clerk of the Court
U.S. Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, OH 45202-3988

Re: *In re MCP No. 165, OSHA Covid Rule*, No. 21-7000

Dear Ms. Hunt:

I represent Job Creators Network, the lead petitioner from the lead Eighth Circuit challenge to the OSHA Mandate, which is in the process of being transferred to this Court. *See Job Creators Network v. U.S. Dep't of Labor*, No. 21-3491 (8th Cir.).

Almost all Petitioners who originally filed petitions challenging the OSHA Mandate in this Court have now sought initial hearing *en banc*. *See Bentkey Services, LLC v. OSHA*, No. 21-4027 (6th Cir.); *Phillips Manufacturing & Tower v. OSHA*, No. 21-4028 (6th Cir.); *Southern Baptist Theological v. OSHA*, No. 21-4033 (6th Cir.).

Job Creators Network respectfully informs the Court that it supports those petitions and believes they should be granted. Recent events make initial *en banc* hearing even more appropriate and urgent.

The Fifth Circuit has stayed the entire OSHA Mandate, but the White House yesterday stated during a press conference that it still expects businesses to take action in advance of the now-stayed Mandate's January 4, 2022, deadline:

Q: Thanks. OSHA suspended the vaccine implementation and enforcement because of a court order. Given this update, *is the administration still*

urging businesses to move forward with the President's vaccine and weekly testing rule? And are you still working off of that January 4th compliance deadline?

MS. PSAKI: *We are.* Let me be very clear: Our message to businesses right now is to move forward with measures that will make their workplaces safer and protect them — their workforces from COVID-19. That was our message after the first day [*sic*] issued by the Fifth Circuit. That remains our message and nothing has changed.

I would note that recent polling — I think that just came out yesterday — showed that 60 percent of businesses are moving forward with measures that keep their workplaces safe. They're essentially implementing components or versions of these vaccine requirements because they know it's in the interests of their workforces — to protect their workforces, to make sure they can bring more people back to the workforce. And we certainly see that as a positive sign.

So, we are still heading towards the same timeline.

The Department of Justice is vigorously defending the emergency temporary standard in court. And we are confident in OSHA's authority.

Press Briefing by Press Secretary Jen Psaki, WHITE HOUSE, Nov. 18, 2021, <https://www.whitehouse.gov/briefing-room/press-briefings/2021/11/18/press-briefing-by-press-secretary-jen-psaki-november-18-2021/> (emphases added).

The press is reporting that exchange as “White House tells businesses to move forward with vaccine mandate.” Morgan Chalfant, *White House Tells Businesses to Move Forward with Vaccine Mandate*, THE HILL, Nov. 18, 2021,

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<https://thehill.com/homenews/administration/582232-white-house-tells-businesses-to-move-forward-with-vaccine-mandate>.

OSHA acknowledged in the Mandate that a substantial lead time is required for businesses to bring themselves into compliance *before* any deadline. The White House's confusing messaging over the effectiveness of the Mandate's deadline—despite it being stayed by court order—militates in favor of the swift consideration and granting of the pending motions for initial *en banc* hearing. Given the White House's statements, the government should promptly agree to initial *en banc* consideration.

Respectfully,

/s/ R. TRENT MCCOTTER

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2021, I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system, which will serve all counsel of record.

/s/ R. Trent McCotter

R. Trent McCotter