

No. _____

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

FABARC STEEL SUPPLY, INC.; TONY PUGH,

Petitioners,

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION; UNITED STATES
DEPARTMENT OF LABOR; DOUGLAS L. PARKER, IN HIS OFFICIAL CAPACITY AS
ASSISTANT SECRETARY OF LABOR FOR OCCUPATIONAL SAFETY AND HEALTH;
MARTY WALSH, IN HIS OFFICIAL CAPACITY AS SECRETARY OF LABOR

Respondents.

PETITION FOR REVIEW

Matthew J. Clark
ALABAMA CENTER FOR LAW AND LIBERTY
2213 Morris Ave., Fl. 1
Birmingham, AL 35203
256-510-1828
matt@alabamalawandliberty.org

Counsel for Petitioners

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, counsel for Petitioners represents that FabArc Steel Supply, Inc. does not have parent entities or issue stock. Counsel further certifies that, to the best of his knowledge, the following persons and entities have an interest in this appeal:

1. Alabama Center for Law and Liberty, LLC – Firm for Petitioner
2. Alabama Policy Institute, Inc. – Sole member of Alabama Center for Law and Liberty, LLC
3. FabArc Steel Supply, Inc. – Petitioner
4. Occupational Safety & Health Administration – Respondent
5. Parker, Douglas – Respondent
6. Pugh, Tony – Petitioner
7. United States Department of Labor – Respondent
8. Walsh, Marty – Respondent

Respectfully submitted Nov. 8, 2021,

/s/ Matthew J. Clark

Matthew J. Clark

ALABAMA CENTER FOR LAW AND LIBERTY

2213 Morris Ave., Floor 1

Birmingham, AL 35203

256-510-1828

matt@alabamalawandliberty.org

Counsel for Petitioners

PETITION FOR REVIEW

Pursuant to 29 U.S.C. § 655(f) and Rule 15, Fed. R. App. P., FabArc Steel Supply, Inc., and Tony Pugh, hereby petition this Court for review of the Occupational Health and Safety Administration's Emergency Temporary Standard ("ETS") published in the Federal Register at Volume 86, pages 61402 through 61555, on November 5, 2021. Specifically, Petitioners petitions for review on the grounds that the ETS, among other grounds:

- Exceeds the authority granted to OSHA and the Department of Labor;
 - Fails to comply with the standards for issuing an ETS;
 - Violates the First Amendment's guarantee of Free Exercise of Religion as applied to as applied to FabArc Steel Supply Inc., which is a closely held corporation whose President and shareholder with more than 50% of the voting power, Tony Pugh, has sincere religious objections to the ETS;
 - Violates the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb et seq., as applied to FabArc Steel Supply Inc., which is a closely held corporation whose President and shareholder with more than 50% of the voting power, Tony Pugh, has sincere religious objections to the ETS;
- and
- Exceeds the authority granted to the federal government to regulate interstate commerce under the Commerce Clause's original meaning.

Jurisdiction and venue are proper here because Petitioner's principal place of business is located in Oxford, Alabama, which is within this circuit. *See* 29 U.S.C. § 655(f). Petitioner has standing to bring this challenge because it employs over 100 employees, and the ETS at issue requires employers with over 100 employees to get them vaccinated.

This Court should vacate the ETS and enjoin Respondents and any other related federal officials from enforcing it. This Court should also stay the implementation of the ETS pending full judicial review.

A copy of the Emergency Temporary Standard is attached as Exhibit A.

Respectfully submitted,

/s/ Matthew J. Clark

Matthew J. Clark

ALABAMA CENTER FOR LAW AND LIBERTY

2213 Morris Ave., Floor 1

Birmingham, AL 35203

256-510-1828

matt@alabamalawandliberty.org

Counsel for Petitioners

CERTIFICATE OF SERVICE

I certify that on November 8, 2021, I caused a copy of this Petition for Review to be served on Respondents the Court's CM/ECF system, and by email and first-class mail to:

Edmund C. Baird
Associate Solicitor for Occupational Safety and Health
Office of the Solicitor
United States Department of Labor
200 Constitution Ave., NW
Washington, DC 20210
baird.edmund@dol.gov
zzSOL-Covid19-ETS@dol.gov

/s/ Matthew J. Clark
Matthew J. Clark
Counsel for Petitioners