

No. 21-3058

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**In the United States Court of Appeals**  
**FOR THE SEVENTH CIRCUIT**

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TANKCRAFT CORPORATION & PLASTICRAFT CORPORATION,  
*Petitioners,*

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,  
*Respondent*

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On a Petition for Review of an Emergency Temporary Standard  
by the Occupational Safety and Health Administration

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**AMICUS CURIAE BRIEF OF WISCONSIN MANUFACTURERS &  
COMMERCE IN SUPPORT OF THE PETITIONERS' PETITION FOR  
REVIEW AND EMERGENCY MOTION FOR STAY**

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Scott E. Rosenow\*  
WMC Litigation Center  
501 E. Washington Ave.  
Madison, WI 53703  
608-661-6918  
srosenow@wmc.org

*Counsel for Wisconsin Manufacturers & Commerce*

*\*Application for admission pending*

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## APPEARANCE &amp; CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 21-3058Short Caption: Tankcraft Corporation, et al v. OSHA

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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- (1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):  
Wisconsin Manufacturers & Commerce
- (2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:  
WMC Litigation Center
- (3) If the party, amicus or intervenor is a corporation:
- i) Identify all its parent corporations, if any; and  
None
- ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:  
None
- (4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:  
N/A
- (5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:  
N/A

Attorney's Signature: /s/ Scott E. Rosenow Date: 11/12/2021Attorney's Printed Name: Scott E. RosenowPlease indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d).

Yes

☒

No

☐Address: 501 E. Washington Ave.Madison, WI, 53703Phone Number: (608) 661-6918

Fax Number: \_\_\_\_\_

E-Mail Address: srosenow@wmc.org

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## INTEREST OF AMICUS CURIAE

*Amicus curiae* submitting this brief is a Wisconsin-based business trade association whose member businesses are interested in, and impacted by, the issue in this case. *Amicus* and its membership have significant experience with workplace safety and health regulations and submit this brief to add additional context and practical perspectives to this case from the view of Wisconsin's regulated business community.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), no party's counsel authored this brief in whole or part, no party or party's counsel contributed money that was intended to fund the preparation or submission of the brief, and no person other than the *amicus*, its members or its counsel contributed money that was intended to fund preparing or submitting the brief. Counsel for the Petitioners does not object to the filing of this *amicus* brief. Counsel for the Respondent, by email, "consent[ed] to a timely filed amicus brief." Given the uncertainty over whether this *amicus* brief is being timely filed,<sup>1</sup> the undersigned counsel is filing a motion for leave to file this brief. If granted, this leave would give *amicus* the authority to file this brief.

*Amicus* Wisconsin Manufacturers & Commerce ("WMC") is Wisconsin's chamber of commerce, manufacturers' association, and safety council. WMC is Wisconsin's largest business trade association with member businesses of all sizes, across all sectors of the economy, and located throughout the state. Since its founding

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<sup>1</sup> See footnote 1 in the motion accompanying this brief.

in 1911, WMC has been dedicated to making Wisconsin the most competitive state in the nation in which to conduct business. WMC supports free enterprise and opposes efforts by the government to regulate outside of its statutory authority.

## INTRODUCTION

This case is about the scope of federal authority over private businesses. The Occupational Safety and Health Administration (“OSHA”) issued an Emergency Temporary Standard (“ETS”) on November 4, 2021, requiring workers at many businesses to get vaccinated against COVID-19 or undergo regular testing. The ETS imposes many obligations on businesses and threatens them with substantial fines for failing to comply. Two Wisconsin businesses—Tankcraft Corp. and Plasticraft Corp.—filed a petition for review of the ETS and an emergency motion for a stay of the ETS. (Doc. 1-1; 2-1.) This Court should grant that petition and motion.

This vaccine mandate will significantly harm Wisconsin businesses if left intact, including mass resignations of workers. Weekly testing is not a viable alternative for several reasons. Congress did not authorize OSHA to issue an ETS requiring tens of millions of workers to get vaccinated. This Court should stay the enforcement of the ETS to avoid irreparable harm to businesses.

## ARGUMENT

### **I. OSHA’s vaccine mandate will significantly and irreparably harm Wisconsin businesses and workers if it takes effect.**

The ETS in question has already harmed businesses and will continue harming them before the December 6 deadline to comply. *See* 29 C.F.R. § 1910.501(m)(2)(i) (setting December 6, 2021, as the deadline for compliance with this ETS). By issuing

an ETS instead of a permanent standard, OSHA harmed businesses by denying them the opportunity to participate in the notice-and-comment rulemaking process. (Doc. 2-1:25–26.) And the ETS will require businesses to take many steps to prepare for compliance before the December 6 deadline. (Doc. 11:3 n.2.) Some businesses might need to devote one or more employees to serve as liaisons overseeing the implementation and continued enforcement of this ETS. Businesses will be financially harmed by devoting time and resources to preparing to implement, and then continually implementing, this ETS. Worse yet, this ETS would likely cause a mass exodus of workers from the businesses who are subject to it. As this Court is probably well-aware, a labor shortage in the United States is contributing to supply-chain problems and inflation.<sup>2</sup> The ETS would likely worsen this labor shortage by causing many workers to resign or be fired.

This ETS is effectively a vaccine mandate because weekly testing requirements are too onerous to be a viable alternative. The U.S. Centers for Disease Control and Prevention has recognized that there is a temporary shortage of point-of-care and over-the-counter test supplies for COVID-19.<sup>3</sup> Testing will likely be in shorter supply in rural areas. Indeed, many counties in Wisconsin have zero or one COVID-19

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<sup>2</sup> See, e.g., Craig Austin, *PBS News Hour*, “How the supply chain caused current inflation, and why it might be here to stay,” <https://www.pbs.org/newshour/economy/how-the-supply-chain-caused-current-inflation-and-why-it-might-be-here-to-stay> (Nov. 10, 2021).

<sup>3</sup> CDC, “Lab Advisory: Shortage of COVID-19 Rapid Tests May Increase Demand for Laboratory Testing,” [https://www.cdc.gov/csels/dls/locs/2021/09-02-2021-lab-advisory-Shortage\\_COVID-19\\_Rapid\\_Tests\\_Increase\\_Demand\\_Laboratory\\_Testing\\_1.html](https://www.cdc.gov/csels/dls/locs/2021/09-02-2021-lab-advisory-Shortage_COVID-19_Rapid_Tests_Increase_Demand_Laboratory_Testing_1.html) (last accessed Nov. 12, 2021).

community testing sites.<sup>4</sup> Even if an unvaccinated worker is able to acquire over-the-counter tests, the ETS does not allow a test that is “both self-administered and self-read unless observed by the employer or an authorized telehealth proctor.” 29 C.F.R. § 1910.501(c)(iii). This observation requirement will cost time and money, and it might not be feasible if telehealth providers are flooded with requests to observe self-tests or if workers are travelling out of state. Some workers might be able to undergo weekly laboratory testing, but they may need to miss one or more days of work while awaiting their test results. *See* 29 C.F.R. §§ 1910.501(g)(1)(i)(B), 1910.501(g)(1)(ii)(B), 1910.501(g)(2). Missed work can harm an employee and employer. Many workers will likely need to pay for testing because the ETS does not require employers to pay for testing. *See* 29 C.F.R. § 1910.501(g)(1), Note 1 to paragraph (g)(1). Finally, testing imposes administrative costs on businesses, such as the requirement to “maintain a record of each test result provided by each employee” who is not fully vaccinated. 29 C.F.R. § 1910.501(g)(4).

Given these testing burdens, many businesses expect to lose a substantial number of workers if they are required to get vaccinated or submit to weekly testing for COVID-19. The vast majority of WMC member businesses who responded to a recent WMC survey—88 percent of respondents—expect to lose workers if the ETS takes effect. (Ex. F.) Just over one-third of these survey respondents expect to lose up to ten percent of their workforce because of the ETS. (Ex. F.) More than half of the respondents—53 percent—expect to lose between 11 and 40 percent. (Ex. F.)

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<sup>4</sup> Wis. DHS, “COVID-19: Community Testing Sites,” <https://www.dhs.wisconsin.gov/covid-19/community-testing.htm> (last accessed Nov. 12, 2021).



Executives from seven businesses have provided declarations explaining the harmful effects that the ETS would have on their businesses. These declarations are included as exhibits with this *amicus* brief.

Stoughton Trailers, LLC, for example, expects to lose 15 percent of its 1,320-employee workforce if this ETS takes effect. (Ex. A.) This company's president and chief executive officer states that "[t]his loss of employees will severely limit the ability of Stoughton Trailers, LLC to operate as a business, and meet the demands of [its] customers." (Ex. A.)

Another manufacturer, Seats, Inc., "expects to lose 25–30% of [its] workforce if the ETS is allowed to take effect." (Ex. B:1.) This company's president states that "weekly testing of non-vaccinated employees is not feasible due to the lack of available testing materials." (Ex. B:1.)

Prent Corp., a Wisconsin-based medical device packaging company that already requires unvaccinated workers to wear masks, "expects to lose 45% of [its] workforce if the ETS is allowed to take effect." (Ex. G:1.) Regularly testing unvaccinated workers would "significantly decrease [Prent's] productivity and production efficiencies." (Ex. G:1.) Prent would further experience "detrimental costs" related to "testing, administrative resources as well as paying for employees' absences during testing and for any side effects." (Ex. G:1.)

If the ETS takes effect, it would have a "widespread and devastating" impact on Drexel Building Supply, Inc., a company with eight locations throughout Wisconsin. (Ex. H:2.) This company is suffering from "the pandemic shortage of labor

and supply chain issues,” and the ETS would exacerbate these problems by causing “a significant number” of employees to resign or retire. (Ex. H:1–2.) The costs of compliance with the ETS would “also be very burdensome” for Drexel, including the anticipated “need to have at least one more full-time employee at each location in order to check on Covid tests weekly and verify the results in order to ensure compliance with the ETS.” (Ex. H:2.)

The ETS would also harm OEM Fabricators, Inc., a custom metal fabrication business. This company “expects to lose 25% of [its] workforce if the ETS is allowed to take effect.” (Ex. C:1.) This company’s president states that “[t]he administrative and financial burden this [ETS] will place on OEM is immense.” (Ex. C:1.) OEM is already facing a labor shortage and “cannot afford to lose” more workers. (Ex. C:1.) Weekly testing would also be a burden on this business. OEM’s president states that it would be “unreasonable” to expect OEM’s unvaccinated workers to pay for weekly testing. (Ex. C:1.) OEM thus expects to pay \$3,000 per week in testing its unvaccinated workers, with the ETS costing this company about \$180,000 annually for tests and ETS-related administrative tasks. (Ex. C:1.) This annual cost “is a substantial undertaking for a company of [OEM’s] size.” (Ex. C:1.) OEM’s president worries that the ETS’s mask requirement for unvaccinated workers will further divide his workforce. (Ex. C:1–2.)

ITU AbsorbTech, Inc.—an industrial laundry that provides services to manufacturers to help protect the environment—expects “to lose 10% of [its] unvaccinated workforce.” (Ex. D:1.) In some of its 14 facilities, the company “may lose

half or more of [its] employees. That may make it impossible to service [its] customers.” (Ex. D:1.) This amount of employee resignations would render ITU AbsorbTech “unable to process materials that are essential to manufacturing companies in some regions of the country.” (Ex. D:2.) The ETS would create a “barrier for recruiting and hiring in the most difficult labor market.” (Ex. D:2.) The ETS would “impact [ITU AbsorbTech’s] capability to recruit, to hire and ultimately fulfill [its] contracts and services to customers.” (Ex. D:2.)

Another Wisconsin-based company, QPS Employment Group, “expects to lose 15% of [its] workforce if the ETS is allowed to take effect.” (Ex. E.) This loss of workers would “severely limit” the company’s ability to meet customer demand and operate as a business. (Ex. E.) Testing its unvaccinated workers would be “financially impactful” due to the logistics of testing thousands of workers in 55 locations throughout the Midwest. (Ex. E.)

## **II. OSHA lacks statutory authority to mandate vaccinations.**

Tankcraft and Plasticraft correctly argue that OSHA lacks the statutory authority to issue the ETS in question. (Doc. 2-1:7–13.) Three canons of statutory construction support this view.

First is the doctrine of constitutional avoidance, under which “ambiguous statutory language [should] be construed to avoid serious constitutional doubts.” *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009). As Tankcraft and Plasticraft explain in their emergency motion, the relevant federal statute would raise serious constitutional questions under the Commerce Clause and non-

delegation doctrine if this Court were to interpret the statute as allowing OSHA to mandate vaccinations. (Doc. 2-1:14–20.)

The second relevant canon of construction is the major-questions doctrine, which “expect[s] Congress to speak clearly when authorizing an agency to exercise powers of ‘vast “economic and political significance.’” *Alabama Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 141 S. Ct. 2485, 2489 (2021) (per curiam) (quoting *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014)). Vaccine mandates are a politically significant issue in the United States right now. And OSHA’s vaccine mandate would have vast economic consequences by causing mass resignations and other financial harm on businesses, as explained *supra*. The relevant federal statute has not clearly authorized OSHA to impose a vastly significant vaccine mandate.

The third relevant canon, which is related to the major-questions doctrine, “require[s] Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power and the power of the Government over private property.” *Alabama Ass’n of Realtors*, 141 S. Ct. at 2489 (citation omitted). OSHA’s vaccine mandate would do both of those things. On the latter score, it would greatly expand the federal government’s authority over private businesses. If the federal government has the power to mandate private-sector workers to get vaccinated, then there is no logical stopping point to this power. Under a logical extension of this vast power, OSHA could mandate private-sector workers to get vaccinated for a host of ailments, refrain from using tobacco products and alcohol, and get tested regularly for a variety of health issues. Congress did not give OSHA

such far-reaching power over private industry in exceedingly clear statutory language.

OSHA's vaccine mandate would also "significantly alter the balance between federal and state power." *Alabama Ass'n of Realtors*, 141 S. Ct. at 2489 (citation omitted). The Supreme Court long ago held that "it is within the police power of *a state* to provide for compulsory vaccination." *Zucht v. King*, 260 U.S. 174, 176 (1922) (emphasis added) (citing *Jacobson v. Massachusetts*, 197 U.S. 11 (1905)). States, not the federal government, have so-called police power "to enact legislation for the public good." *Bond v. United States*, 572 U.S. 844, 854 (2014). OSHA has no police power to mandate vaccinations, and Congress lacks any constitutional authority to delegate such power to OSHA.

This case is about the scope of the federal government's power more than it is about COVID-19 or vaccinations. "It is indisputable that the public has a strong interest in combating the spread of the COVID–19 Delta variant. But our system does not permit agencies to act unlawfully even in pursuit of desirable ends." *Alabama Ass'n of Realtors*, 141 S. Ct. at 2490. OSHA's vaccine-mandate ETS is unlawful.

## CONCLUSION

This Court should grant the petition for review and the emergency motion for a stay.

Respectfully submitted this 16th day of November 2021.

/s/ Scott E. Rosenow  
\_\_\_\_\_  
Scott E. Rosenow\*

WMC Litigation Center  
501 E. Washington Ave.  
Madison, WI 53703  
608-661-6918  
srosenow@wmc.org

*Counsel for Wisconsin Manufacturers & Commerce*

*\*Application for admission pending*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify the following:

This brief complies with the type-volume limitation of Circuit Rule 29 because this brief contains 2,273 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Circuit Rule 32(b), and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in 12-point Century Schoolbook font.

Dated this 16th day of November 2021.

/s/ Scott E. Rosenow

Scott E. Rosenow\*  
WMC Litigation Center  
501 E. Washington Ave.  
Madison, WI 53703  
608-661-6918  
srosenow@wmc.org

*Counsel of Record for Amicus Curiae  
Wisconsin Manufacturers & Commerce*

*\*Application for admission pending*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2021, I filed the foregoing Amicus Brief with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Dated this 16th day of November 2021.

/s/ Scott E. Rosenow

Scott E. Rosenow\*  
WMC Litigation Center  
501 E. Washington Ave.  
Madison, WI 53703  
608-661-6918  
srosenow@wmc.org

*Counsel of Record for Amicus Curiae  
Wisconsin Manufacturers & Commerce*

*\*Application for admission pending*



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**DECLARATION OF ROBERT P. WAHLIN**

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STATE OF WISCONSIN     )  
                                      ) SS.  
COUNTY OF DANE         )

I, Robert P. Wahlin, make the following declaration under the penalty of perjury:

1. I am the President & CEO of Stoughton Trailers, LLC, a Wisconsin limited liability company, and I have personal knowledge of the information stated in this affidavit and submit this affidavit in support of WMC's amicus brief in the *Tankcraft Corporation & Plasticraft Corporation v. OSHA* case.

2. Stoughton Trailers, LLC is a family owned company engaged in the engineering, design, manufacture, and sale of over the road trailers, semi-trailers, intermodal container chassis, and related transportation equipment. Stoughton Trailers, LLC employs approximately 1,320 employees at its headquarters and five manufacturing plants located in Stoughton, Wisconsin; Brodhead, Wisconsin; and Evansville, Wisconsin. Stoughton Trailers, LLC will be subject to the OSHA Emergency Temporary Standard (the ETS) based on the size of its workforce.

3. Based upon feedback from employees, Stoughton Trailers, LLC expects to lose 15% of its workforce if the ETS is allowed to take effect. This loss of employees will severely limit the ability of Stoughton Trailers, LLC to operate as a business, and meet the demands of our customers.

4. Because of the factors listed above, I believe the ETS would irreparably harm Stoughton Trailers, LLC.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

11/12/2021  
[date]  
SARA L. BOHLEN  
NOTARY PUBLIC  
STATE OF WISCONSIN  
Robert P. Wahlin  
President & CEO  
Stoughton Trailers, LLC  
Sara L. Bohlen  
11/28/2021

**EXHIBIT B**

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**DECLARATION OF ERIC SAUEY**

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STATE OF WISCONSIN     )  
                                      ) SS.  
COUNTY OF SAUK         )

I, Eric Sauey, make the following declaration under the penalty of perjury:

1. I am the President of Seats Incorporated, and I have personal knowledge of the information stated in this affidavit and submit this affidavit in support of WMC's amicus brief in the *Tankcraft Corporation & Plasticraft Corporation v. OSHA* case.

2. Seats Incorporated is a manufacturer of custom vehicular seating for On Highway vehicles, Off Highway vehicles and many other specialized vehicles, including military transport vehicles. We will be subject to the OSHA Emergency Temporary Standard (the ETS) based on the size of our workforce.

3. Based upon feedback from my employees, our company expects to lose 25 – 30% of our workforce if the ETS is allowed to take effect. This loss of employees will severely limit Seats Incorporated's ability to operate as a business, and meet the demands of our customers.

4. Vaccination rates notwithstanding, weekly testing of non-vaccinated employees is not feasible due to the lack of available testing materials. Required testing and placing the administration of said testing on Seats Incorporated is an undue burden. I believe that this mandate is unconstitutional as it violates an individual's right of privacy. I would submit that if this requirement is so compelling that it should be put before congress and enacted into law, not rule by fiat. Due process is non-existent.

**EXHIBIT B**

5. Because of the factors listed above, the ETS would irreparably harm Seats Incorporated.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

11/11/2021  
[date]

Eric W. Sauey  
ERIC W. SAUEY

DRAFT - CONFIDENTIAL

**EXHIBIT C**

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**DECLARATION OF Kelly Ingli, President of OEM Fabricators, Inc.**

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I, Kelly Ingli, make the following declaration under the penalty of perjury:

1. I am the President of OEM Fabricators, Inc., and I have personal knowledge of the information stated in this affidavit and submit this affidavit in support of WMC's amicus brief in the *Tankcraft Corporation & Plasticraft Corporation v. OSHA* case.
2. OEM Fabricators, Inc. is a custom metal fabrication business, with 3 locations in Wisconsin, employing 260 Team Members. We will be subject to the OSHA Emergency Temporary Standard (the ETS) based on the size of our workforce.
3. Based upon feedback from OEM Fabricators, Inc. Team Members, our company expects to lose 25% of our workforce if the ETS is allowed to take effect. This loss of Team Members will severely limit OEM Fabricator, Inc.'s ability to operate as a business, and meet the demands of our customers.
4. OSHA's Emergency Temporary Standard pertaining to the COVID-19 vaccination and testing will certainly be detrimental to OEM Fabricators, Inc.'s overall operations and financial health. The administrative and financial burden this will place on OEM is immense. OEM is currently facing labor shortages and issues finding new Team Members. OEM cannot afford to lose Team Members and this ETS will only intensify the issue. The Leadership Team has already received several notifications stating Team Members will find employment elsewhere if we move ahead with either option. Less than 50% of our Team Members are vaccinated and due to strong opinions regarding the vaccine, it is against the best interests of OEM to mandate the vaccine. With 260 Team Members, this would result in testing at least 130 individuals each week along with a mask requirement. The idea that OEM would be able to expect Team Members to pay for their own test is unreasonable. The tests OEM would have to purchase, if even available, average \$25 per test. This would equate to over \$3,000 a week in additional costs, not to mention the administrative burden that would be experienced. With 3 locations, 3 different shifts, extensive record keeping and supervised tests, OEM Fabricators, Inc. would need to hire additional Team Members potentially increasing annual cost by an additional \$180,000. This is a substantial undertaking for a company of our size. We also find the mask requirement for unvaccinated individuals will only work to further the divide our workforce on an already controversial topic, is an invasion of an individual's

**EXHIBIT C**

privacy as well as a violation of HIPAA. OEM strives to maintain a supportive and Family Friendly Workplace, these rules undermine OEM's culture and create an adversarial environment, something we have worked diligently to avoid for many years.

5. Because of the factors listed above, the ETS would irreparably harm OEM

Fabricators, Inc.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

\_\_\_\_\_  
11/12/2021



Kelly Ingli




STATE OF WISCONSIN )

)ss.

COUNTY OF Pepin )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of November, 2021, by Kelly Ingli, the President of, respectively, of OEM Fabricators, Inc., a Wisconsin corporation, on behalf of the company.

  
Notary Public, Pepin County  
Deputy Clerk

**EXHIBIT D**

---

**DECLARATION OF JAMES LEEF**

---

STATE OF WISCONSIN     )  
                                      ) SS.  
COUNTY OF WAUKESHA )

I, James Leef make the following declaration under the penalty of perjury:

1. I am the CEO of ITU AbsorbTech Inc., and I have personal knowledge of the information stated in this affidavit and submit this affidavit in support of WMC's amicus brief in the *Tankcraft Corporation & Plasticraft Corporation v. OSHA* case.

2. ITU AbsorbTech, Inc is an industrial laundry that specializes in providing environmentally preferable services to manufacturers that eliminate oil and solvent laden materials from those customer's waste streams. Oils and solvents are recovered for re-use. The company employs 465 people, operates 5 processing facilities and services customers in 38 states. We will be subject to the OSHA Emergency Temporary Standard (the ETS) based on the size of our workforce.

3. If this ETS goes through we stand to lose 10% of our unvaccinated workforce, perhaps 25 individuals.

Many will flee to smaller firms, despite our pledge to support their freedom to choose via weekly testing, simply because they do not want to reveal their medical records to outsiders, especially the government. These departures will cost us tens of thousands of dollars in recruitment and training costs, well in excess of the pitifully low amount OSHA used in their purported "cost/benefit analysis".

We employ over 100 people, but they are located in 14 different facilities, 12 of which have less than 100 employees, and 6 of them with less than 10 employees. In some of our smaller locations, we may lose half or more of our employees. That may make it impossible to service our customers. Our customers will suffer with limited or no access to the essential environmental services we provide. Penalizing



**EXHIBIT D**

us in these smaller facilities, when there is essentially no employee contact between these facilities, seems at odds with the logic of the 100 employee rule. Many of our people who may leave us are concentrated in our processing plants.

We may be unable to process materials that are essential to manufacturing companies in some regions of the country.

In addition, the ETS imposes another unnecessary barrier for recruiting and hiring in the most difficult labor market. With record high job openings and low labor participation rates across the nation, the ETS does not incentivize people to enter nor stay in the workforce.

Our organization has 31 open positions, up 50% from 2020. We are growing and the ETS will clearly be compounding the damage we already are experiencing with the labor shortages.

We treat our employees as essential workers, who are required to service customers and process product on-site. The negative trickle-down effect of the ETS will impact our capability to recruit, to hire and ultimately fulfill our contracts and services to customers – many of whom are actively contributing to a robust economy, which the government benefits from greatly.

The ETS does not support a sustainable model for business nor us, as an employer. It creates a model of dependency on the whim, not science, of misconceptions of COVID and “grave danger” that will cause negative repercussions for employers, likely to be felt for years to come.

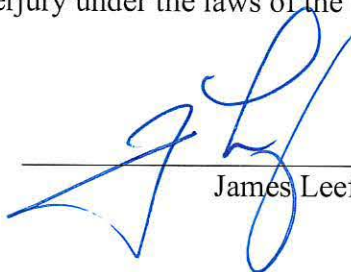
4. Because of the factors listed above, the ETS would irreparably harm ITU

AbsorbTech Inc.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

11.12.21

Nov 12, 2021

  
James Leef

**EXHIBIT E**

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**DECLARATION OF QPS Employment Group**

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STATE OF WISCONSIN     )  
  ) SS.  
COUNTY OF WAUKESHA )

I, SCOTT A. MAYER, make the following declaration under the penalty of perjury:

1. I am the CEO of QPS EMPLOYMENT GROUP, and I have personal knowledge of the information stated in this affidavit and submit this affidavit in support of WMC's amicus brief in the *Tankcraft Corporation & Plasticraft Corporation v. OSHA* case.

2. QPS EMPLOYMENT GROUP is part of the Employment Services Industry, with a headquarters located in Brookfield, WI, as well as 55 branches across seven states and has internal staff of over 360. We will be subject to the OSHA Emergency Temporary Standard (the ETS) based on the size of our workforce.

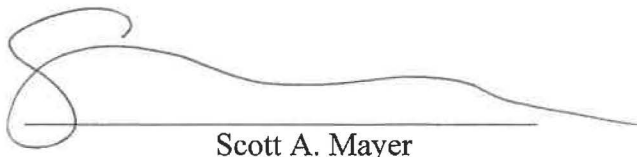
3. Based upon feedback from QPS EMPLOYMENT GROUP'S employees, our company expects to lose 15% of our workforce if the ETS is allowed to take effect. This loss of employees will severely limit QPS EMPLOYMENT GROUP'S ability to operate as a business, and meet the demands of our customers.

4. Testing our associates will be financially impactful due to logistics of overseeing 5700 associate employees currently on assignment, 55 locations throughout the Midwest, and the sheer volume of additional work overseeing the proposed protocol.

5. Because of the factors listed above, the ETS would irreparably harm QPS EMPLOYMENT GROUP.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

11/12/21  
[date]

  
\_\_\_\_\_  
Scott A. Mayer



**EXHIBIT F**

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**DECLARATION OF KURT R. BAUER**

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STATE OF WISCONSIN     )  
                                      ) SS.  
COUNTY OF DANE         )

I, Kurt R. Bauer, make the following declaration under the penalty of perjury:

1. I am the President/CEO of Wisconsin Manufacturers & Commerce (WMC), and I have personal knowledge of the information stated in this declaration and submit this declaration in support of WMC's amicus brief in the *Tankcraft Corporation & Plasticraft Corporation v. OSHA* case.

2. WMC is a statewide business advocacy association formed in 1911 that represents roughly 3,800 member businesses. Our members consist of small, medium, and large employers, and represent all sectors of Wisconsin's economy. Many of WMC's members will be subject to the OSHA Emergency Temporary Standard (the ETS) because they have 100 or more employees.

3. On November 11-12, WMC conducted a survey of our members who have at least 100 employees to ascertain the impact of the ETS on business operations and employment. Roughly 15% of WMC members with 100 or more employees responded to the survey, making it a statistically valid sample of our large employer membership.

4. Based upon the results of the survey, employers expressed serious concerns with respect to the loss of employees resulting from implementation of the ETS.

5. The survey found that 88% of respondents anticipate losing employees if the ETS is implemented. Specifically, 36% of those companies expect to lose up to 10% of their workforce, 33% expect to lose between 11% and 20% of their workforce, and 20% said they will

**EXHIBIT F**

lose between 21% and 40% of their workforce. The remaining 11% of respondents were unsure what percent of their workforce they would lose.

6. Furthermore, 96% of businesses expressed concerns about employees quitting as a result of the ETS, 88% said there would be disruptions to company operations, and 84% cited a lack of testing supplies required to administer the weekly testing to non-vaccinated employees.

7. The results of WMC's survey of employers with 100 or more employees raises grave concerns that the ETS will irreparably harm Wisconsin employers and their employees if the mandate is allowed to take effect.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

\_\_\_\_\_  
November 15, 2021

  
\_\_\_\_\_  
Kurt R. Bauer

**EXHIBIT G**

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**DECLARATION OF PRENT CORPORATION**

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STATE OF WISCONSIN     )  
  ) SS.  
COUNTY OF ROCK )

I, Rachel Andres, make the following declaration under the penalty of perjury:

1. I am the Senior Vice Present of Corporate Services at Prent Corporation, and I have personal knowledge of the information stated in this affidavit and submit this affidavit in support of WMC's amicus brief in the *Tankcraft Corporation & Plasticraft Corporation v. OSHA* case.

2. Prent Corporation is a Medical Device Packaging company in Janesville, Wisconsin employing 800 employees. We will be subject to the OSHA Emergency Temporary Standard (the ETS) based on the size of our workforce.

3. Based upon feedback from Prent employees, our company expects to lose 45% of our workforce if the ETS is allowed to take effect. This loss of employees will severely limit Prent's ability to operate as a business and meet the demands of our customers.

4. Testing our employees will significantly decrease productivity and production efficiencies during a time when Prent is seeing an increase in orders yet is struggling to keep turnover at a minimum. Substantial time and resources will be required in order to test the employees that are not vaccinated, which is around 40% of our workforce. Likewise, the cost associated with testing, administrative resources as well as paying for employees' absences during testing and for any side effects will be detrimental to our company.

5. Furthermore, Prent Corporation has successfully implemented a Covid-19 policy wherein unvaccinated employees are required to wear a mask at all times, are not allowed to

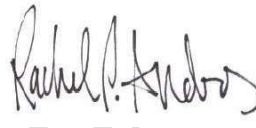
**EXHIBIT G**

travel on behalf of the company and are encouraged to partake in the various onsite vaccination clinics Prent has held. Prent has a detailed preventative measure policy in place as well and has kept confirmed Covid cases under 15% while continuously educating our employees on the importance of getting vaccinated and following CDC guidelines.

6. Consequently, in consideration of the factors listed above, the ETS would irreparably harm Prent Corporation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

November 12, 2021  
[date]

  
\_\_\_\_\_  
[Rachel Andres]

**EXHIBIT H**

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

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TANKCRAFT CORPORATION &  
PLASTICRAFT CORPORATION,

Petitioners,

v.

Case No. 21-3058

OCCUPATIONAL SAFETY AND HEALTH  
ADMINISTRATION,

Respondent,

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**DECLARATION OF JOEL FLEISCHMAN**

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Joel Fleischman, under penalty of perjury, states as follows:

1. I am the President of Drexel Building Supply, Inc. ("Drexel Building Supply"). Drexel Building Supply is a family-owned building supply business that provides building materials and services to professional contractors and homeowners throughout Wisconsin. Drexel Building Supply has approximately 650 employees at eight locations around the State of Wisconsin.

2. I and other members of the leadership of Drexel Building Supply have had numerous conversations with Drexel Building Supply employees regarding the vaccine mandate for private employers that OSHA released via an Emergency Temporary Standard (ETS) on November 4, 2021. Opposition to this mandate is widespread in the Drexel Building Supply workforce. Based on our conversations, we estimate that up to 80% of Drexel Building Supply employees oppose the mandate.

3. I believe that, if the OSHA ETS goes into effect, a significant number of Drexel Building Supply employees will either quit and go to an employer with fewer than

**EXHIBIT H**

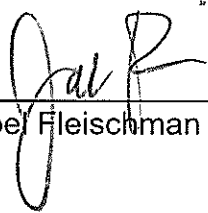
100 employees (that does not have to comply with the ETS) or will simply retire. Drexel Building Supply is already at a critical moment in its business due to the pandemic shortage of labor and supply chain issues causing shortages in material and supplies. At present, 9% of our positions are unfilled due to the ongoing labor shortage. We cannot afford to lose a significant number of other employees and still expect our business to successfully operate. Simply put, if the OSHA ETS is allowed to go into effect, the impact on Drexel Building Supply's business will be widespread and devastating.

4. Setting aside the additional and severe labor issues that the ETS will create, the costs and demands of compliance will also be very burdensome for our company. We anticipate that we will need to have at least one more full-time employee at each location in order to check on Covid tests weekly and verify the results in order to ensure compliance with the ETS.

5. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 15, 2021.

By:

  
\_\_\_\_\_  
Joel Fleischman