



December 6, 2021

The Honorable Chuck Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Republican Leader  
United States Senate  
Washington, DC 20510

Dear Leader Schumer and Leader McConnell:

I write to share the National Retail Federation's support for S.J. Res. 29, a resolution to provide for Congressional disapproval of the Occupational Safety and Health Administration's (OSHA) Emergency Temporary Standard for COVID-19 Vaccination and Testing ("ETS").

**Please note that NRF will consider votes for the resolution as part of the Retail Opportunity Index for our voting scorecard.**

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

NRF and its members have prioritized the safety of employees and customers since the onset of the COVID-19 pandemic. Over the past 20 months, retailers have made extraordinary investments and efforts to mitigate the spread of the virus and adhere to public health guidelines, including mask mandates, curbside pickup, capacity limits and plexiglass at check-out. Since the introduction of the vaccines in late 2020, retailers have distributed, encouraged, incentivized and, in some instances, mandated the vaccine.

The ETS, one of the most far-reaching and aggressive rules in OSHA's five decades of existence, was promulgated — without public notice and comment — under Section 6(c) of the Occupational Safety and Health Act. While Congress granted OSHA this limited authority to enact emergency temporary standards to respond to "grave danger" to employees from work-related exposure to substances or agents, nothing suggests that this authority includes issuance of a nationwide vaccination mandate. Moreover, OSHA is statutorily only permitted to use this section when an ETS is "necessary" to address the substance or agent. The fact that COVID-19 case numbers have reduced by nearly half since the President's order on Sept. 9, 2021, undercuts the Administration's argument that the ETS is necessary at this time.

Retailers remain deeply concerned with the overly burdensome, complex and infeasible requirements of the ETS. As retailers navigate the challenges of an ongoing pandemic,

nationwide workforce shortage and supply chain disruptions, the Administration seeks to impose this infeasible mandate during the busy holiday shopping season, the most important time of year for the industry. The Administration should be aware of how difficult and problematic it is for employers to assess and document the vaccination status of employees. After 74 days, the Administration was only able to verify the status of 95% of its own employees. Under the ETS, however, the Administration would require private-sector employers to assess and record 100% of their workforce in only 30 days.

In issuing the ETS, OSHA exceeded the authority granted to it by Congress in 1970. As such, NRF urges Congress to support this resolution. If successful, the resolution would appropriately rescind an unworkable standard that the Administration cannot implement for its own employees.

Regardless of our concerns about the ETS, retailers will continue to focus on ensuring the safety of employees and customers as we have throughout the pandemic.

Sincerely,

A handwritten signature in black ink, appearing to read "David French".

David French  
Senior Vice President  
Government Relations

cc: Members of the U.S. Senate