IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

TEXAS INTERNATIONAL PRODUCE ASSOCIATION and TEXAS VEGETABLE ASSOCIATION, *Plaintiffs,* v. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, KEITH E. SONDERLING, in his official capacity as Acting Secretary of Labor, and DAVID KEELING, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health, *Defendants.*	§	Case No. 7:26-cv-208-DBT-NSM

PLAINTIFFS' OMNIBUS BRIEF
IN RESPONSE TO DEFENDANTS' MOTIONS AND IN SUPPORT
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: ***Page(s):***

Statutes & Rules:

Other Authorities:

INTRODUCTION

When Congress enacted the Occupational Health and Safety Act, it enacted possibly "the broadest delegation of power to an administrative agency found in the United States Code." *Allstates Refractory Contrs., LLC v. Su*, 144 S. Ct. 2490, 2490–91 (2024) (Thomas, J. dissenting from denial of certiorari). Under that unchecked delegation of core legislative power, OSHA has since adopted thousands of pages of business regulations covering everything from how businesses must lay out their offices to how they must train their employees.

Plaintiffs—who are currently subject to many of these federal regulations—argue that this unchecked delegation of legislative authority to the executive branch is unconstitutional. They seek a declaration that this unchecked delegation violates the separation of powers and injunctive relief from the daily burdens imposed by this labyrinth of unconstitutionally adopted federal mandates. Importantly, Plaintiffs challenge the unchecked delegation of legislative authority, not each individual page of regulations, despite Defendants' efforts to conflate the two throughout their brief.

Rather than focus on this straightforward constitutional challenge, Defendants spend most of their fifty-page brief trying to complicate this case. Their "shotgun" brief raises objections involving standing, subject matter jurisdiction, venue, and statute of limitations. *See* Defs.' Br., ECF No. 24.

But, as regulated parties, Plaintiffs have standing to challenge laws that restrict their daily business practices and those of their members. Plaintiffs can bring those claims in this Court because challenges to OSHA's enabling statute belong here, not in the Fifth Circuit. And Plaintiffs are not barred from challenging daily, recurring regulatory burdens simply because the regulation giving rise to those burdens was promulgated more than six years ago.

As for the merits, Defendants do not dispute that the Act allows OSHA to bind nearly every employer in the United States with "any occupational safety or health

standard," 29 U.S.C. § 655(b), that is "reasonably necessary or appropriate to provide safe or healthful employment and places of employment," 29 U.S.C. § 652(8). Although Defendants spend much time articulately defending OSHA's actions as good policy, that is not the question before the Court. Rather, the question before the Court is whether Congress unconstitutionally delegated legislative policy choices to OSHA. It did. The Court should deny Defendants' motions and grant Plaintiffs' motion for summary judgment.

REPLY ARGUMENT

Plaintiffs set forth the standards applicable to their motion for summary judgment and a permanent injunction in their opening brief. Pls.' Br., ECF No. 4, at 8–9. Plaintiffs incorporate that standard for their opposition to Defendants' motion for summary judgment.

In addition to their cross-motion for summary judgment, Defendants move to dismiss Plaintiffs' complaint for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Defs.' Br., ECF No. 24, at 11–19. Defendants also argue in a footnote that Rule 12(b)(6) applies to their arguments about the timeliness of this action premised on their statute of limitations defense being nonjurisdictional. *See* Defs.' Br., ECF No. 24, at 20–21 & n.8.

I. Plaintiffs have standing to challenge 29 U.S.C. § 655(b).

Plaintiffs bring this suit on behalf of themselves as regulated parties and on behalf of their members under associational standing. *See Ctr. for Biological Diversity v. EPA*, 937 F.3d 533, 536 (5th Cir. 2019).

To establish standing on their own behalf, Plaintiffs must meet the familiar three-part test for Article III standing: injury, traceability, and redressability. *See id.* To establish associational standing, Plaintiffs must additionally show that "(1) the association's members would independently meet the Article III standing requirements; (2) the interests the association seeks to protect are germane to the

purpose of the organization; and (3) neither the claim asserted nor the relief requested requires participation of individual members." *Id.*; *Career Colls. & Schs. of Tex. v. U.S. Dep't of Educ.*, 98 F.4th 220, 233–34 (5th Cir. 2024).

Defendants do not dispute that Plaintiffs meet parts two and three of the associational standing test.[1] This makes sense. A lawsuit designed to reduce arbitrary restrictions on vegetable growers is clearly "germane to the purpose" of organizations designed to protect the interest of vegetable growers. *See, e.g.*, *Nat'l Religious Broads. v. FCC*, 138 F.4th 282, 290–91 (5th Cir. 2025) (holding broadcasters association had standing to challenge regulation of broadcasters); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 588 (5th Cir. 2006) (holding getting Democratic candidates elected was germane to the purpose of the Democratic Party). And a lawsuit seeking solely prospective relief from federal rules is not the sort of fact-laden damages claim that ordinarily requires participation of individual members. *See Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); *Nat'l Religious Broads.*, 138 F.4th at 290–91.

Instead, Defendants raise two arguments. First, Defendants argue that neither Plaintiffs nor their members have suffered injuries sufficient to establish Article III standing. Second, Defendants suggest that because Plaintiffs' theory of the case would implicitly call into question all OSHA regulations adopted under 29 U.S.C. § 655(b), Plaintiffs are impermissibly seeking relief for non-parties.

Neither argument is persuasive. First, as explained below, Plaintiffs and their

---

[1] Where defendants have not contested these factors, some courts have treated those factors as conceded without further discussion. *See, e.g.*, *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.*, 73 F.3d 546, 555 (5th Cir. 1996); *Career Colls. & Schs. of Tex. v. U.S. Dep't of Educ.*, 681 F. Supp. 3d 647, 655 n.1 (W.D. Tex. 2023). Other courts have dispensed with the analysis of the uncontested factors in a cursory fashion. *See, e.g.*, *Young Conservatives of Tex. Found. v. Smatresk*, 73 F.4th 304, 309 n.2 (5th Cir. 2023) (addressing the factors without citation in a footnote). The same approach is appropriate here.

members are directly subject to regulations unlawfully adopted under the OSH Act, 29 U.S.C. § 655(b). That increased regulatory burden—which is traceable to 29 U.S.C. § 655(b)—is a sufficient injury for standing. *See, e.g.*, *Contender Farms, L.L.P. v. USDA*, 779 F.3d 258, 264–65 (5th Cir. 2015) (holding plaintiffs had standing because the plaintiffs were "objects of the Regulation"). Second, the fact that a judgment holding 29 U.S.C. § 655(b) unconstitutional might have broader effects does not change the ordinary test for regulated party standing.

A. Plaintiffs and their members are subject to regulations adopted under 29 U.S.C. § 655(b).

Plaintiffs' standing theory is straightforward. It is undisputed that Plaintiffs and their members are "employers" that are "engaged in a business affecting commerce." 29 U.S.C. § 652(5). As such, it is undisputed that Plaintiffs and their members must comply with the various standards adopted under 29 U.S.C. § 655(b). 29 U.S.C. § 654(a)(2). Therefore, as businesses subject to regulation under 29 U.S.C. § 655(b), Plaintiffs and their members have standing to challenge that unconstitutional delegation of legislative authority.

Establishing regulated party standing is a "flexible inquiry rooted in common sense." *Contender Farms,* 779 F.3d at 265. When a plaintiff is regulated under the scheme he challenges, standing is generally established, because: (1) any increased regulatory burden is an injury in fact, (2) that injury is necessarily traceable to the regulatory scheme, and (3) that injury—i.e., the increased regulatory burden—would be resolved by an order preventing the scheme's enforcement. *See id.* at 266.

To meet this standard, the regulatory burden need not be substantial. Even minor obligations—such as annual filing requirements or staff training mandates—are sufficient to establish standing. *Nat'l Religious Broads.*, 138 F.4th at 290–91 (filing requirement); *Career Colls.*, 98 F.4th at 234 (staff training). If the challenged scheme requires the plaintiff to adopt certain practices or risk potential penalties,

"there is no question" that the plaintiff has standing. *Abbott Labs. v. Gardner*, 387 U.S. 136, 154 (1967).

Here, there can be no dispute that Plaintiffs and their members face regulatory burdens under 29 U.S.C. § 655(b). As noted above, they are businesses engaged in commerce and therefore meet the criteria of 29 U.S.C. § 652(5) as a matter of law. At a minimum, that means they must regularly sift through the thousands of pages of regulations adopted under 29 U.S.C. § 655(b) to ensure compliance. That is already enough for standing. *See Texas v. EEOC*, 933 F.3d 433, 446 (5th Cir. 2019) (holding standing was easily met where Texas challenged EEOC guidance because "the Guidance covers Texas").

Beyond this baseline burden, Plaintiffs provided a non-exhaustive list of three *examples* of regulations with which they must regularly comply. Although Defendants dispute the burdens caused by two of these examples, they tellingly do not contend that Plaintiffs and their members are wholly untouched by the cornucopia of regulations adopted under 29 U.S.C. § 655(b). How could they? OSHA regulations cover almost everything. *See Allstates Refractory*, 144 S. Ct. at 2490–91 (Thomas, J., dissenting from denial of certiorari).

1. The Tractor Safety Rule

The plainest example of an increased regulatory burden is the Tractor Training Rule. Under that rule, Plaintiffs' members must spend time and effort retraining their tractor drivers annually, whether they need training or not. Plaintiffs' members have experienced tractor drivers that they would not retrain annually but for this rule. Galeazzi Decl., ECF No. 4-1, ¶¶ 30–31.[2] That additional annual training

[2] Defendants attempt to distort that clear fact by misreading Mr. Galeazzi's declaration. *Compare* Defs.' Br., ECF No. 24, at 16 (claiming Plaintiffs' members "*might* provide training less frequently or to fewer employees," and citing Galeazzi Decl., ECF No. 4-1, ¶ 31), *with* Galeazzi Decl., ECF No. 4-1, ¶ 31 (stating that "[e]ach member" listed in paragraph 30 "compl[ies] with the Tractor Rule," and that "[e]ach

requirement is a textbook example of an increased regulatory burden that is sufficient for standing. *See Career Colls.*, 98 F.4th at 234 (holding mandatory "staff training" is an injury in fact).

Defendants object to this argument because Plaintiffs have not specifically quantified the dollars-and-cents costs of those unnecessary trainings. Defs.' Br., ECF No. 24, at 16. But once an increased regulatory burden is established, Plaintiffs are not required to "conclusively establish[] the precise compliance costs" of that burden. *Purl v. United States HHS*, 787 F. Supp. 3d 284, 302 (N.D. Tex. 2025). The increased regulatory burden is, itself, the injury. *Id.*; *see also Career Colls.*, 98 F.4th at 234.

Because Plaintiffs need only establish some increased regulatory burden to have standing to challenge 29 U.S.C. § 655(b), the burden of the Tractor Safety Rule is sufficient to establish standing. This Court therefore need not examine the other examples. Nevertheless, additional examples are included below.

2. The First Aid Rule

Beyond the Tractor Rule, Plaintiffs are also injured by the First Aid Rule. Under the First Aid Rule, Plaintiffs must either maintain onsite trained personnel and medical supplies to deal with injuries or commit to sending "all injured employees" to a nearby hospital. 29 C.F.R. § 1910.151(b). That increased regulatory burden is sufficient to establish standing.

Defendants raise three objections. First, Defendants argue that Plaintiffs' First Aid Rule injuries are speculative because Plaintiffs have never had a major injury onsite that required them to send someone to the hospital. Defs.' Br., ECF No. 24, at 13. But Plaintiffs' lack of emergency incidents is irrelevant. Plaintiffs must comply with the First Aid Rule whether they have regular incidents or not. 29 C.F.R.

---

member . . . without that regulation in place . . . *would not* spend time annually providing their experienced tractor drivers with unnecessary training . . . ." (emphasis added)).

§ 1910.151(b). This ongoing regulatory burden is, itself, the injury.

Second, Defendants claim that Plaintiffs are wholly exempt from the First Aid Rule because there is a hospital nearby. Defs.' Br., ECF No. 24, at 13. But this misreads the rule. The rule exempts Plaintiffs from having *onsite medical staff*, if there is a "hospital in near proximity to the workplace which *is used* for the treatment of *all injured employees*." 29 C.F.R. § 1910.151(b) (emphasis added). In other words, the existence of the nearby hospital merely gives Plaintiffs a choice—*commit* in advance to using one hospital for all injuries (no matter how minor) or have onsite medical staff and supplies. Either way, the rule legally obligates Plaintiffs to take actions that they would not have to take but for the rule. When a rule requires a plaintiff to adopt certain practices or risk potential penalties, "there is no question" that the plaintiff is injured and therefore has standing. *Abbott Labs. v. Gardner*, 387 U.S. 136, 154 (1967).

Third, Defendants argue that any injuries Plaintiffs suffer under the First Aid Rule would not be redressed by this lawsuit, because the same restriction applies under rules that were not adopted under 29 U.S.C. § 655(b). *See* Defs.' Br., ECF No. 24, at 14. In other words, Defendants argue that even if the rules are enjoined, Plaintiffs will still be required by other rules to take similar—but not identical—actions. *Id.* That does not make Plaintiffs' injuries under the First Aid Rule un-redressable.

Plaintiffs are not required to eliminate every source of regulation for this lawsuit to provide some form of effective relief. As the Fifth Circuit has recognized, facing multiple layers of regulation—as opposed to just one—is itself an injury. *Contender Farms*, 779 F.3d at 266 (quoting *Ass'n of Am. R.Rs. v. DOT*, 38 F.3d 582, 585 (D.C. Cir. 1994)). Removing one layer of regulation is therefore a sufficient outcome to establish redressability for standing purposes. *See, e.g.*, *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 261 (1977). And while Defendants

appear to assert—without citation—that old regulations would automatically apply upon Plaintiffs' victory here, that may not be so. *See Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 553 (D.C. Cir. 1983) (declining to revive old standard because "returning to the old standard would be irrational").

3. The Fire Safety Rules

Plaintiffs are also injured by the Fire Safety Rules. Under the Fire Safety Rules, Plaintiffs must either keep and maintain Fire Extinguishers or develop and maintain elaborate emergency plans. This increased regulatory burden is sufficient for standing.

Defendants' sole objection is that even if Plaintiffs prevail, other local and federal regulations would still require that Plaintiffs maintain fire extinguishers. Defs.' Br., ECF No. 24, at 15. But this argument misunderstands the redressability analysis. Simply removing one layer of regulation is sufficient for redressability, even if other layers of regulation remain. *Contender Farms*, 779 F.3d at 266. A case need not guarantee complete relief to meet the redressability analysis. Simply removing "one barrier" to relief is enough. See *Vill. of Arlington Heights*, 429 U.S. at 261.

B. Plaintiffs do not seek relief for non-parties simply by challenging a statute.

Defendants claim that by seeking to invalidate 29 U.S.C. § 655(b), rather than focusing on a specific regulation, Plaintiffs are effectively seeking relief for non-parties. Defs.' Br., ECF No. 24, at 16–17. But this improperly conflates the theory of Plaintiffs' case with the relief requested.

To be sure, Plaintiffs' argument that 29 U.S.C. § 655(b) is an unconstitutional delegation would, by implication, call into question regulations adopted under that provision that do not directly injure Plaintiffs. But these secondary effects do not mean that Plaintiffs lack standing to seek relief from a statute that directly causes their regulatory burden. *Trump v. CASA, Inc.* made clear that any injunctive relief

granted in this case must run only to Plaintiffs and their members. 606 U.S. 831, 852 (2025). It did not foreclose any challenge to a statute that might happen to have downstream effects as a matter of precedent. *See id.*

By confusing theory and relief, Defendants also appear to argue that Plaintiffs lack standing to challenge the validity of 29 U.S.C. § 655(b) unless they independently establish standing for every regulation adopted under that statute. Defs.' Br., ECF No. 24, at 17. But Article III simply requires that Plaintiffs establish standing for the relief they seek—in this case, an order preventing the application of any regulation adopted under 29 U.S.C. § 655(b)'s unconstitutional delegation. As explained above, Plaintiffs meet that burden because they are subject to 29 U.S.C. § 655(b)'s increased regulatory burden.

Defendants' contrary rule would make it virtually impossible to challenge any broad statutory delegation of legislative authority. Indeed, under their theory, the broader the delegation, the less likely anyone would have standing to challenge it.

An example proves the point. Imagine a statute that purported to delegate Congress's entire taxing power to the Secretary of the Treasury, who then promulgated a comprehensive "tax code." Under Defendants' approach, a taxpayer subject to some provisions of the code could only challenge the delegation if it also proved injury from every provision of the code—even those that do not apply to it.

Thankfully, that is not the law. Once a plaintiff has established an injury under the statute, he can challenge it. That burden is met here.

II. The parties agree that venue is proper in this judicial district.

The parties have resolved Defendants' venue defense and agreed to transfer the case to this Court. ECF No. 31 ¶ 2. The parties agree that venue under 28 U.S.C. § 1391(e) is proper in this district. *Id.* ¶ 3. The Court should so hold.

III. This Court has subject matter jurisdiction because only challenges to the validity of particular OSHA standards, not the constitutionality of its enabling statute, must be brought in the courts of appeals.

Defendants argue that Plaintiffs should have brought this claim directly in the Fifth Circuit Court of Appeals[3] under Section 6(f) of the OSH Act (29 U.S.C. § 655(f)), and that any such action had to be brought within 60 days of the relevant standard. Defs.' Br., ECF No. 24, at 17–20. Defendants are wrong because § 655(f) does not apply to Plaintiffs' claims.

Plaintiffs' claims are proper in the district court because they concern the constitutionality of OSHA's enabling statute, not the validity of a particular OSHA safety standard. Judicial review in the district court is only barred when Congress intends to limit jurisdiction by statute *and* the claims at issue "are of the type Congress intended to be reviewed within th[e] statutory structure." *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212 (1994). The text of the OSH Act shows that Congress did not intend to funnel Plaintiffs' claims to the courts of appeals.

The district court in *Allstates Refractory Contractors v. Walsh* rejected this exact argument from OSHA in a near-identical challenge. 625 F. Supp. 3d 676, 679–82 (N.D. Ohio 2022). The court began with the OSH Act's two lanes of review for specific OSHA standards: challenges to OSHA enforcement actions, governed by § 658(a), and "pre-enforcement" challenges to OSHA standards, governed by § 655(f). *Id.* at 679. In the former, an employer who is cited may contest the standard through an administrative process and appeal. *Id.* In the latter, the challenge to the standard must be brought within sixty days in the relevant court of appeals. *Id.* Allstates argued that these processes governed challenges to the validity of specific *standards*, which is unlike its challenge to the validity of OSHA's enabling *statute*. *Id.* The court agreed with Allstates that Congress did not intend to bar Allstates' challenge for

[3] Defendants forfeited any argument that the D.C. Circuit Court of Appeals is the proper venue. *See* ECF No. 31 ¶ 3.

exactly that reason—the statutory context is challenges to specific standards. *Id.* at 680. The court also considered the other factor the Supreme Court had then provided: whether Allstates would have an alternative meaningful avenue of relief (it would not). *Id.* "Because this challenge is 'collateral' to any [OSHA] orders or rules from which review might be sought,'" the court proceeded to review it. *Id.* (quoting *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 490 (2010)).

Since the *Allstates* decision, the Supreme Court continued the *Thunder Basin* and *Free Enterprise Fund* line of precedent in *Axon Enterprises v. FTC*, which agrees with the holding in *Allstates* that Plaintiffs' claims here are proper in a district court. In *Axon Enterprises*, the Supreme Court drew from *Thunder Basin* and *Free Enterprise Fund* three inquiries that control whether a statutory review scheme bars a claim: "First, could precluding district court jurisdiction 'foreclose all meaningful judicial review' of the claim? Next, is the claim 'wholly collateral to [the] statute's review provisions'? And last, is the claim 'outside the agency's expertise'?" *Axon Enters. v. FTC*, 598 U.S. 175, 186 (2023) (quoting *Thunder Basin*, 510 U.S. at 208, 212, 213). Here, the answer to all three questions is yes.

Precluding district court jurisdiction here forecloses all judicial review of Plaintiffs' claims. Indeed, if jurisdiction is unavailable here, then Plaintiffs "would be forced to 'bet the farm' by waiting to incur OSHA penalties in order to challenge the constitutionality of OSHA itself." *Allstates Refractory*, 625 F. Supp. 3d at 680. That was not Congress's intent. *Cf. Thunder Basin*, 510 U.S. at 208, 212, 213.

In addition, Plaintiffs' claims are collateral to the statute's review provisions. The OSH Act's standards-review provision is meant to limit challenges to individual standards to either within sixty days of their promulgation or when they are enforced against an individual. There is no equivalent reason to limit judicial review of the enabling statute. *See Allstates Refractory*, 625 F. Supp. 3d at 680; *see also Ohio Coal*

Ass'n v. Perez, 192 F. Supp. 3d 882, 898 (S.D. Ohio 2016); *Elk Run Coal Co. v. U.S. Dep't of Labor*, 804 F. Supp. 2d 8, 22 (D.D.C. 2011).

Finally, the claim is well outside the agency's expertise. OSHA has no expertise in structural constitutional challenges like Plaintiffs' nondelegation claim, just as the FTC had no expertise in Axon's ALJ appointments clause claim. *Cf. Axon Enters.*, 598 U.S. at 194. As such, there is no reason to interpret the OSH Act to permit Plaintiffs' claim to only be litigated in front of the agency during an enforcement action. This Court has subject matter jurisdiction over this case, and the OSH Act does not bar Plaintiffs' claim.

IV. Plaintiffs' declaratory judgment action is timely.

Defendants argue that Plaintiffs' action is untimely for three reasons. First, they argue that Section 6(f) of the OSH Act requires Plaintiffs to bring their action directly in the Fifth Circuit. Defs.' Br., ECF No. 24, at 20. This argument fails because Section 6(f) does not apply to Plaintiffs' claims here, as argued above. Second, they argue that the catchall statute of limitations for actions against the United States applies to Plaintiffs' claims. *Id.* at 20–23. But persuasive, on-point case law from this Court's sister district holds that Plaintiffs' action is timely because it only seeks a declaratory judgment and prospective relief. It is unlike the claims governed by the catchall statute of limitations. Third, Defendants argue that laches bars Plaintiffs' claims, apparently based on the premise that it is prejudicial to the government to have to argue the constitutionality of the OSH Act in different circuits. *See id.* at 24 (citing past challenges related to OSHA). No such prejudice exists. The Court should deny Defendants' motion to dismiss on these grounds.

As to the statute of limitations, Defendants incorrectly argue that the catchall statute of limitations for actions against the United States, 28 U.S.C. § 2401(a), time-bars this action. Defs.' Br., ECF No. 24, at 20–23. They assume, without establishing, that this is a *Corner Post* APA claim or non-statutory review of "agency action." *Id.*

at 21 (quoting *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 808 (2024), and *Geyen v. Marsh*, 775 F.2d 1303, 1309 (5th Cir. 1985)). It is neither. Defendants' arguments fail because they mischaracterize the nature of the relief Plaintiffs seek and because Plaintiffs' injuries are continually refreshed every day.

Plaintiffs' complaint is clear that this action is "an implied private right of action directly under the Constitution to challenge governmental action under . . . separation of powers principles." Compl., ECF No. 1, ¶ 66, (quoting *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 491 n.2 (2010)). Plaintiffs "object to the . . . *existence*" of Congress's delegation to OSHA on separation of powers grounds. *See Free Enter. Fund*, 561 U.S. at 490 (emphasis added); Compl., ECF No. 1, at 19 (Relief Requested). Plaintiffs' action proceeds against, *inter alia*, federal officials in their official capacity, and it seeks prospective relief for ongoing separation of powers violations. Compl., ECF No. 1, ¶¶ 19–20, 66, Relief Requested A–B. Courts in this circuit have repeatedly held that such claims are not subject to 28 U.S.C. § 2401(a). *See, e.g.*, *Deanda v. Becerra*, 645 F. Supp. 3d 600, 615 (N.D. Tex. 2022) (holding challenge to the ongoing administration of Title X to undermine parental rights not barred and explaining that "Plaintiff does not bring a facial challenge to an agency rule. . . . Plaintiff only asks for a declaration of his rights under 28 U.S.C. § 2201, along with an injunction to ensure those rights are observed"); *Leal v. Azarii*, No. 2:20-CV-185-Z, 2020 U.S. Dist. LEXIS 241947, at *19 (N.D. Tex. Dec. 23, 2020) (holding challenge to agencies' continued enforcement of the Affordable Care Act's Contraceptive Mandate not barred and explaining that "[b]y their very nature, these types of suits are seeking prospective relief for ongoing injuries. Statutes of limitations ar[e] simply inapplicable to such injuries.").

In addition, even if the limitations period somehow applied, Plaintiffs allege ongoing injuries that are new every morning. Courts in this circuit and others have recognized that injuries caused by the ongoing improper exercise of government

power are evergreen. *In re Kelley*, No. 4:20-cv-00283-O, 2021 U.S. Dist. LEXIS 193410, at *26 (N.D. Tex. Feb. 25, 2021) ("When, as here, the challenged action is ongoing, the cause of action continues to accrue along with the allegedly unconstitutional conduct that gives rise to the plaintiff's injury and cannot be insulated by a statute of limitations."); *see also Kuhnle Bros., Inc. v. County of Geauga*, 103 F.3d 516, 522 (6th Cir. 1997) (explaining that "[a] law that works an ongoing violation of constitutional rights does not become immunized from legal challenge for all time merely because no one challenges it within two years of its enactment," and collecting cases). These cases are on point and foreclose Defendants' arguments.

Further, because Defendants misunderstand Plaintiffs' claims, they apply *Geyen* out of context. The plaintiff in *Geyen* challenged discrete past administrative actions[4] taken by the Army in 1969 and 1982. 775 F.2d at 1305, 1308. Consistently, the court construed Geyen's suit as against a federal official who "*has acted* unlawfully," not one who continues to act unlawfully, noted the application of the APA, and applied the six-year limitations period to one of his claims. *Id.* at 1307 (emphasis added). *Geyen* does not mention 28 U.S.C. § 2201, declaratory judgment, or continuing injuries. *See id. Geyen* simply does not stand for the premise that 28 U.S.C. § 2401 applies to actions for declaratory relief from ongoing violations of the separation of powers. And it is not even clear that *Geyen* remains good law. *See, e.g.*, *Danos v. Jones*, 652 F.3d 577, 582 (5th Cir. 2011) (acknowledging *Geyen* but assuming

[4] Defendants admit that *Geyen* only applies to a nonstatutory challenge to "agency action" when introducing the case, Defs.' Br., ECF No. 24, at 21, then somehow equate that with "a nonstatutory challenge to *Defendants' authority*," *id.* at 23 (emphasis added). The latter statement is patently misleading sleight of hand; the two are not the same. *Axon Enters.*, 598 U.S. at 192 (distinguishing challenges to "the Commissions' power to proceed at all" from challenges to "actions taken in the agency proceedings").

that a sovereign-immunity exception could apply in a case challenging a discrete action by the Fifth Circuit Judicial Council).

Finally, laches does not apply here because Plaintiffs seek prospective relief, and Defendants cannot establish prejudice where their violations of the Constitution are ongoing. Where the remedy sought is "only prospective . . . laches may not be used as a shield for future, independent violations of the law." *Env't Def. Fund v. Marsh*, 651 F.2d 983, 1005 n.32 (5th Cir. Unit A 1981). Further, "undue prejudice, an essential element in a defense of laches, is normally inapplicable when the relief is prospective." *Id.*; *accord Teladoc, Inc. v. Tex. Med. Bd.*, No. 1-15-CV-343 RP, 2015 U.S. Dist. LEXIS 166754, at *16 (W.D. Tex. Dec. 14, 2015) (collecting cases).

Plaintiffs' injuries are ongoing, as discussed above. They and their members are continually subject to OSHA regulations like the Tractor Rule, Portable Fire Extinguisher Rule, Emergency Action Plan Rule, and the Fire Prevention Plan Rule. They only seek future-looking relief from unconstitutional regulations that continue in force because of the unconstitutionality of the enabling statute. And the government cannot claim prejudice where it seeks to "perpetuat[e] . . . unlawful agency action." *State v. Biden*, 10 F.4th 538, 560 (5th Cir. 2021) (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)). The Court should reject Defendants' statute of limitations and laches defenses.

V. Because the OSH Act is an impermissible delegation of core legislative power, it is unconstitutional, and summary judgment must be granted for Plaintiffs.

The Court should grant summary judgment for Plaintiffs because, simply put, "[i]f this far-reaching grant of authority does not impermissibly confer legislative power on an agency, it is hard to imagine what would." *Allstates Refractory*, 144 S. Ct. at 2490–91 (Thomas, J., dissenting from denial of certiorari). Defendants agree

that this case is proper for resolution at summary judgment. Defs.' Br., ECF No. 24, at 24. But their legal analysis badly misses the mark.

First, the OSH Act is bereft of an intelligible principle. Congress did little more than instruct the agency to "go forth and do good." *See FCC v. Consumers' Rsch.*, 606 U.S. 656, 741 (2025) (Gorsuch, J., dissenting); *Glob. Van Lines, Inc. v. Interstate Com. Comm'n*, 714 F.2d 1290, 1296 (5th Cir. 1983) ("A general congressional exhortation to 'go forth and do good,' without more, is not a proper foundation for the sound development of administrative law.").

Second, this is an inappropriate case for the application of the doctrine of constitutional avoidance. That doctrine applies only when a statute has more than one plausible construction. Here, however, the OSH Act has only one plausible construction: a broad delegation of unfettered power to OSHA to promulgate whatever regulations it pleases.

Third, even if that statement by Congress were an intelligible principle under existing precedent, the intelligible principle test should be reconsidered by an appropriate court.

A. Nondelegation

The parties agree that the cornerstone of the nondelegation analysis is whether Congress provided the agency with both a general policy and the boundaries of its delegated authority. Defs.' Br., ECF No. 24, at 26. But Defendants misunderstand what that must look like. As the Supreme Court has explained, those boundaries must either (1) require an explicit judicially reviewable factual finding by the Executive Branch or (2) set up an intelligible reviewable standard that would limit the scope of the Executive Branch's discretion. *Panama Refin. Co. v. Ryan*, 293 U.S. 388, 415 (1935); *see also A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 530 (1935). Defendants also forget that "the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred."

Panama Refin., 293 U.S. at 475*; Consumers' Rsch.*, 606 U.S. at 673 (citing *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)).

In other words, Congress' clarity must be near its apex here. Yet all OSHA was told was "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. § 651(b). To that end, it may issue "any occupational safety and health standard." 29 U.S.C. § 655(b). All OSHA must find to serve this nebulous goal is that the proposed standard is "reasonably necessary or appropriate to provide safe or healthful employment and places of employment." 29 U.S.C. § 652(8). An intelligible principle cannot consist of instructions that allow OSHA to regulate anything and everything it would like, in any way it would like. Yet that is what Defendants claim is an intelligible principle. That is wrong.

In reality, OSHA's power is "virtually unfettered." *Allstates Refractory Contrs., LLC v. Su*, 79 F.4th 755, 781 (6th Cir. 2023) (Nalbandian, J., dissenting); *see also* Cass Sunstein, *Is OSHA Unconstitutional?*, 94 Va. L. Rev. 1407, 1448 (2008) ("No other federal regulatory statute confers so much discretion on federal administrators, at least in any area with such broad scope, and it is not difficult to distinguish OSHA from statutes that the Court has upheld."). With such great power comes a corresponding need for clear boundaries. Yet OSHA has none, and Defendants, despite claiming to provide a list of eight constraints on the Secretary's authority, have done nothing of the sort. *See* Defs.' Br., ECF No. 24, at 26. Those eight constraints are illusory.

Consider the Tractor Rule. *See* 29 C.F.R. § 1928.51(d). That rule requires employers to train their tractor drivers annually on nine topics. *See id.* OSHA could have required fifteen topics. It could have required the training monthly, or every five years. It could have exempted employees with active commercial driver's licenses. It could have exempted tractor operators under the age of 35 from the rule or banned

all people over the age of 55 from operating tractors. Perhaps it could have set a required minimum height, or required tests of eyesight. It could have required employers to screen an OSHA-approved tractor driving video. And it is likely that OSHA could even rescind the Tractor Rule in full. To do so, all OSHA would have to do is find that the Tractor Rule is not "reasonably necessary or appropriate to provide safe or healthful employment and places of employment," 29 U.S.C. § 652(8), or that any adjustments it would make are reasonably necessary or appropriate to that purpose. With that nebulous language, the opinion of a Department of Labor bureaucrat is sufficient reason to believe the revised or rescinded standard is within OSHA's power. The text of the statute gives no reason to doubt that OSHA could do any of this if it wanted to.

None of the eight illusory constraints prevent this broad sweep of rulemaking authority. The first, the "significant risk" requirement, is as much a legislative judgment call as "reasonably necessary or appropriate." And context provides no further bar to OSHA's exercise of power. The second—economic and technological feasibility—would not bar any of these alterations. Nor would the third (occupational), or the fourth (serve the objectives of the OSH Act). It is unclear how the fifth "constraint" is a constraint at all—the cited provision is a *power* to require warning labels and protective equipment. *See* Defs.' Br., ECF No. 24, at 29. And Defendants do not explain how it is a constraint. *See id.*

The sixth constraint Defendants provide comes the closest. But closer inspection reveals it is just a restatement of the basic principles of judicial review of agency actions. True, OSHA may not behave in an entirely arbitrary and capricious manner, bereft of evidence, reason, or logic. And that is all the substantial evidence standard that Defendants point to requires—basic judicial review principles. *See* Defs.' Br., ECF No. 24, at 30; *see also* 5 U.S.C. § 706(2)(E) ("The reviewing court shall . . . hold unlawful and set aside agency action . . . found to be . . . unsupported by

substantial evidence . . . ."). If being subject to the APA provides OSHA's safety standards authority with an intelligible principle, then it would be impossible for any delegation to an agency to ever violate the nondelegation doctrine so long as the APA remains on the books. That cannot be the case.

The seventh constraint fares no better. To begin, it is worth noting that Plaintiffs did not challenge the initial two years of OSHA's rulemaking authority. Thus, the constraint that required OSHA to act to provide maximum worker protection is not relevant to this nondelegation inquiry. With that removed, what remains of Defendants' seventh constraint is an out-of-context, out-of-circuit quote that requires a "high degree" of worker protection. Even if the statute said that, that language is just as standardless.

Defendants' eighth constraint is more of the same—the language Defendants quote boils down to that "reasonably necessary or appropriate" means the standard must not have "unreasonable" costs, as the statutory language all but says. *See* Defs.' Br., ECF No. 24, at 31. No one is arguing that OSHA may behave unreasonably. But the world of "reasonable" is a large one. If the best OSHA can say about the safety standards delegation is that it bars the agency from acting unreasonably, then it certainly runs afoul of the nondelegation doctrine.

Further, as Plaintiffs explained in detail in their motion for summary judgment, OSHA's safety standards delegation is unlike those that have been upheld. Defendants attempt to liken OSHA's authority to that considered in *Consumers' Research*, but they could not be more different. *Compare* Defs.' Br., ECF No. 24, at 32, *with* Pls.' Br., ECF No. 4, at 14–17. That is why many scholars and jurists have openly questioned the delegation to OSHA. *See, e.g.*, Pls.' Br., ECF No. 4, at 20 (citing sources).

B. The doctrine of constitutional avoidance is inapplicable here, where the statute has only one plausible construction.

It is only "where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [that a court's] duty is to adopt the latter." *United States ex rel. Att'y Gen. v. Del. & Hudson Co.*, 213 U.S. 366, 408 (1909) (emphasis added). Although well-intentioned and undoubtedly true, this canon has also permitted many a court to "act[] as a roving commission to rewrite statutes to taste." Frank H. Easterbrook, *Do Liberals and Conservatives Differ in Judicial Activism?*, 73 U. Colo. L. Rev 1401, 1405 (2002); *see also* B. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2146 (2016) (critiquing constitutional avoidance as "sometimes look[ing] more like judicial abdication—a failure to confront the constitutional question raised by the statute as written—than judicial restraint").

The canon should not be applied here, for one simple reason: the text is clear. Congress's intent when it enacted the OSH Act was equally clear. No one doubts that the delegation to OSHA was one of enormous consequence. No one doubts that Congress intended to give OSHA tremendous power. This case is that rare example of an agency shoving elephantine regulations through an elephant-sized-hole that Congress undoubtedly meant to give it. Defendants provide no reason to adopt an alternative construction of the statute that is implausible from the plain text.

C. None of Plaintiffs' claims are foreclosed by binding precedent.

Defendants overreach by arguing that a number of Plaintiffs' arguments are foreclosed by binding precedent, when that is simply untrue. *See* Defs.' Br., ECF No. 24, at 35–42 (Section IV.B, entitled "Summary Judgment Should Be Denied to Plaintiffs Because Their Arguments Are Foreclosed by Binding Precedent").

Defendants cite no precedent directly binding this Court and holding that 29 U.S.C. § 655(b) is a constitutional delegation. *See generally id.* There is a simple reason for that: none exists.

Further, although Defendants are correct that *Consumers' Research* reaffirmed the intelligible principle test, the result in *Consumers' Research* supports Plaintiffs' arguments here. As Defendants agree, *see* Defs.' Br., ECF No. 24, at 39, Plaintiffs explained in detail in their opening brief the key elements of the Supreme Court's holding in *Consumers' Research* and how starkly they differ from OSHA's safety standards delegation, *see* Pls.' Br., ECF No. 4, at 14–24. Contrary to Defendants' suggestion, Plaintiffs do not suggest that *Consumers' Research* displaced the existing intelligible principle standard. What it did do, however, was give an example of how the current Supreme Court understands and reviews nondelegation questions. That review is—as it always has been—a searching review of the boundaries and policy Congress set. The difference Plaintiffs point the Court to between *Consumers' Research* and this case is that Congress provided policy guidance and firm boundaries to the FCC there, but almost no policy guidance or boundaries to OSHA here. *See, e.g.*, Pls.' Br., ECF No. 4, at 19. That same lack of guidance and boundaries is why this case resembles the New-Deal-Era caselaw Defendants reference. *Cf.* Defs.' Br., ECF No. 24, at 41.

Finally, Defendants attempt to twist an ordinary preservation statement into an argument that this Court should defy the Supreme Court. Plaintiffs made no such suggestion. *See* Pls.' Br., ECF No. 4, at 27 (arguing that if OSHA's safety standards delegation passes constitutional muster under the existing intelligible principle standard, "then the test is meaningless and *the Supreme Court should revisit it*" (emphasis added)). For these reasons, Defendants are wrong to suggest that any of Plaintiffs' arguments are foreclosed by binding precedent, except, of course, for the

one instance where Plaintiffs explicitly stated that the Supreme Court should revisit current binding precedent.

VI. Plaintiffs are entitled to declaratory and permanent injunctive relief as to all OSHA safety standards promulgated under 29 U.S.C. § 655(b).

In this case, Plaintiffs assert that OSHA's authority to promulgate safety standards under 29 U.S.C. § 655(b) is unconstitutional. Thus, the actual case or controversy before the Court is that very question. The Court should grant Plaintiffs both declaratory and injunctive relief sufficient to remedy that violation.

A. The Court should permanently enjoin enforcement of all OSHA safety standards against Plaintiffs and their members.

Plaintiffs do not challenge that *Trump v. CASA, Inc.*, 606 U.S. 831, bars a universal injunction in this case, and do not seek one. But permanently enjoining OSHA from enforcing all regulations promulgated under 29 U.S.C. § 655(b) against Plaintiffs and their members is appropriate. And Plaintiffs have shown that they are entitled to that relief by satisfying all four relevant factors: (1) success on the merits; (2) that failure to grant an injunction will result in irreparable injury; (3) that the injury outweighs any damage that an injunction will cause the opposing party; and (4) that an injunction will not disserve the public interest. *Valentine v. Collier*, 993 F.3d 270, 280 (5th Cir. 2021); *see also eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

On factor one, Plaintiffs succeed on the merits as discussed above.

On factor two, Plaintiffs and their members have suffered, and continue to suffer, irreparable harm because they are required to daily comply with invalid OSHA safety standards. ECF No. 4-1 ¶¶ 10–32. And "complying with a regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs." *BST Holdings, L.L.C. v. OSHA*, 17 F.4th 604, 618 (5th Cir. 2021) (citing *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016)). Defendants do not contest that sovereign immunity likely bars recovery of monetary damages. *See Wages &*

White Lion Invs., L.L.C. v. U.S. FDA, 16 F.4th 1130, 1142 (5th Cir. 2021) ("[F]ederal agencies generally enjoy sovereign immunity for any monetary damages." (citations omitted)).

The third and fourth factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Defendants have no interest in enforcing unconstitutional and illegal regulations. *See, e.g.*, *League of Women Voters*, 838 F.3d at 12 ("There is generally no public interest in the perpetuation of unlawful agency action."). But the public does have an interest in government agencies abiding by the law. *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994) (noting the "public interest in having government agencies abide by the federal laws that govern their existence and operations"). Because all 29 U.S.C. § 655(b) safety standards stem from an unconstitutional delegation, OSHA suffers no injury from ceasing enforcement of them. But the public interest is served by OSHA ceasing any unlawful enforcement against Plaintiffs and their members.

Defendants also argue that Plaintiffs are only entitled to an injunction on the OSHA safety standards that Plaintiffs have identified as presently injuring them. But that argument conflates Plaintiffs' injury allegations for standing purposes with the source, scope, and theory of the constitutional violation at issue. The scope of injunctive relief is "dictated by the extent of the violation established." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Here, the violation Plaintiffs establish is not that five discrete OSHA standards are unlawful in isolation, but that 29 U.S.C. § 655(b) unconstitutionally delegates legislative power to OSHA.

Further, the equitable tradition has long permitted courts to "administer complete relief between the parties." *CASA*, 606 U.S. at 851 (quoting *Kinney-Coastal Oil Co. v. Kieffer*, 277 U.S. 488, 507 (1928)); *see also Mock v. Garland*, 75 F.4th 563, 587 (5th Cir. 2023) ("[I]njunctions should be crafted to 'provide complete relief to the plaintiffs.'" (quoting *Califano*, 442 U.S. at 702)). Complete relief requires enjoining

enforcement of all safety standards promulgated under 29 U.S.C. § 655(b)'s unconstitutional delegation. Plaintiffs identified specific 29 U.S.C. § 655(b) standards to establish concrete injury; they did not thereby narrow their constitutional claim to those rules alone. Plaintiffs should not be required to scour the Federal Register to list every OSHA rule that may apply to them for their complaint or relitigate the same nondelegation challenge each time OSHA seeks to enforce another safety standard derived from the same unconstitutional grant of legislative authority.

Complete relief of the constitutional violation at issue requires that the Court permanently enjoin enforcement of all § 655(b) safety standards against Plaintiffs and their members.

B. Declaratory relief is appropriate to remedy constitutional violations.

Defendants do not appear to challenge that declaratory relief is appropriate here. *See, e.g.*, *Free Enter. Fund*, 561 U.S. at 512 (holding petitioners "entitled to declaratory relief" for a constitutional violation). Rather, Defendants only challenge the Court's authority to "declare universal legal rights of nonparties" under *Trump v. CASA*.

Plaintiffs do not seek a declaration of "universal legal rights of nonparties." Rather, they seek a declaration resolving the actual controversy between these parties: whether 29 U.S.C. § 655(b) unconstitutionally delegates legislative power to OSHA. The Declaratory Judgment Act authorizes the Court to "declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a). A declaration that 29 U.S.C. § 655(b) unconstitutionally delegates legislative power to OSHA, and that 29 U.S.C. § 655(b) is therefore unlawful, resolves that actual controversy presented here.

Notably, the Court is empowered to issue a declaratory judgment "whether or not further relief is or could be sought." *Id.* And "[t]he existence of another adequate

remedy [such as a vacatur or injunction] does not preclude a declaratory judgment that is otherwise appropriate." *Nat'l Ass'n for Gun Rights, Inc. v. Garland*, 741 F. Supp. 3d 568, 611 (N.D. Tex. 2024) (quoting Fed. R. Civ. P. 57). In other words, the Court need not choose between declaratory and injunctive relief.

Accordingly, Plaintiffs ask the Court to grant both a permanent injunction barring OSHA from enforcing all 29 U.S.C. § 655(b) safety standards against Plaintiffs and their members and a declaration that 29 U.S.C. § 655(b) is an unconstitutional delegation of legislative authority.

CONCLUSION

Congress's delegation of legislative authority to OSHA under 29 U.S.C. § 655(b) violates Article I, section 1 of the Constitution. Defendants have not shown otherwise. Accordingly, Plaintiffs respectfully request that this Court grant their summary judgment motion, deny Defendants' cross-motions, issue a declaration that Congress's delegation under 29 U.S.C. § 655(b) is unconstitutional, and permanently enjoin OSHA from enforcing 29 U.S.C. § 655(b) safety standards against Plaintiffs and their members.

Date: May 15, 2026

Respectfully submitted,

/s/ *Chance Weldon*
JAMES V. F. DICKEY
Minnesota Bar No. 393613
BENJAMIN I. B. ISGUR*
Virginia Bar No. 98812
SOUTHEASTERN LEGAL FOUNDATION
560 W. Crossville Road, Suite 104
Roswell, GA 30075
Tel.: (770) 977-2131
bisgur@southeasternlegal.org
jdickey@southeasternlegal.org

ROBERT HENNEKE
Texas Bar No. 24046058
CHANCE WELDON
Texas Bar No. 24076767

MATTHEW P. CHIARIZIO
Texas Bar No. 24087294
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
Phone: (512) 472-2700
Fax: (512) 472-2728
rhenneke@texaspolicy.com
cweldon@texaspolicy.com
mchiarizio@texaspolicy.com

Counsel for Plaintiffs

* *S.D. Texas Admission Pending*

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2026, I electronically filed the foregoing with the Clerk of the Court for the Southern District of Texas by using the CM/ECF system, which will serve a copy of same on all counsel of record.

/s/ *Chance Weldon*
CHANCE WELDON