

*United States Occupational Safety and Health Administration v. Federici Contracting, LLC*

This case turns on the scope of rulemaking authority granted to the Occupational Safety and Health Administrations (OSHA) under the OSH Act and whether complete vacatur is a lawful remedy of Article III courts when presented with a rule that exceeds the agency's authority to regulate. Plaintiffs, Federici Contracting, LLC, brought suit against Defendant OSHA, alleging that OSHA's rulemaking in 29 C.F.R. §1926.1444 exceeded its authority under the OSH Act, 29 U.S.C. §655(b)(7), by requiring employers in the construction industry with more than 100 employees to hire a personal protective equipment coordinator ("PPE Coordinator"). Federici argued that OSHA exceeded its authority under the OSH Act by requiring companies to hire an additional employee. They sought both injunctive relief and nationwide vacatur of the rule. OSHA argued that the rule was within its authority to "prescribe the use of labels or other appropriate forms of warning" and to "make appropriate modifications in the foregoing requirements...as may be warranted by experience," 29 U.S.C. §655(b)(7), and that the court had no authority to vacate the rule under the Administrative Procedure Act (APA).

After the district court rejected OSHA's arguments, granting nationwide vacatur of the rule, OSHA appealed to the Ames Circuit. The court of appeals affirmed the district court's determination. The circuit court relied on the canon of constitutional avoidance to reach a determination that the OSH Act authorizes OSHA to make modest alterations to items included on its labels and appropriate forms of warning but that it was not permitted to abjure appropriate forms of warning altogether in favor of mandating regulated entities hire new employees altogether to further the agency's goals. To OSHA's argument that nationwide vacatur was a remedy broader than is contemplated by the APA or acceptable under Article III, the Ames Circuit admitted sympathy to OSHA's position finding Supreme Court precedent silent on the constitutionality of vacatur, a remedy which acts universally and is in contradiction to Article III's guidance that a plaintiff's remedy must be limited to the inadequacy that produced the injury. The Ames Circuit further cited a circuit split on the question of whether vacatur is the exclusive remedy available to federal courts under the APA. Finding a plain interpretation that "set aside" usually means "vacate," the circuit court affirmed the district court's ruling.

OSHA subsequently appealed to the Supreme Court of the United States. Its appeal presents two questions:

1. Whether 5 U.S.C. §706(2) of the Administrative Procedure Act requires courts to vacate agency rulemakings found to violate the Act.
2. Whether, if so, 5 U.S.C. §706(2) violates Article III of the U.S. Constitution by requiring federal courts to exceed their judicial power.