

NO. 20-1158

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**AMERICAN FEDERATION OF LABOR AND CONGRESS OF
INDUSTRIAL ORGANIZATIONS**

PETITIONER,

v.

**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
UNITED STATES DEPARTMENT OF LABOR,**

RESPONDENT.

On Emergency Petition for a Writ of Mandamus

**NATIONAL ASSOCIATION OF HOME BUILDERS
OF THE UNITED STATES, ASSOCIATED BUILDERS AND
CONTRACTORS, AMERICAN ROAD AND TRANSPORTATION
BUILDERS ASSOCIATION, LEADING BUILDERS OF AMERICA,
MASON CONTRACTORS ASSOCIATION OF AMERICA, AND
AMERICAN SUBCONTRACTORS ASSOCIATION
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN
OPPOSITION TO EMERGENCY PETITION FOR A WRIT OF
MANDAMUS AND SUPPORT OF RESPONDENT**

Dated: May 29, 2020

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Emergency Temporary Standard for Infectious Diseases (“ETS”) relating to the ongoing COVID-19 pandemic.

The construction *amici* are seeking to participate in this case as *amicus curiae* **without objection** from Respondent. Petitioner does not consent to the participation, but does **not object to it**, provided the construction *amici* file its brief by 4:00 pm ET on May 29, 2020 and it is limited to 3,900 words. Construction *amici* have complied with these parameters.

The NAHB is a Washington, D.C.-based trade association that represents more than 140,000 members nationwide who are construction employers involved in home building, remodeling, multi-family construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. NAHB is affiliated with more than 700 state and local home-builder associations around the country.

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 69 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors.

The ARTBA's membership includes private and public-sector members that are involved in the planning, designing, construction and maintenance of the nation's roadways, waterways, bridges, ports, airports, rail and transit systems. The transportation construction industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs. ARTBA is a 501(c)(6) trade association headquartered in Washington, D.C.

The LBA represents twenty of the nation's largest homebuilding companies. Its members construct about one third of the new homes sold annually in the United States, generating over \$33 billion in revenue and accounting for over 350,000 jobs through direct employment and the engagement of subcontractors. LBA's primary goal is ensuring that new homes remain affordable for American families.

The MCAA is the national trade association representing mason contractors both union and open shop. MCAA was incorporated in 1950. Its purpose is to help educate, train, and represent the mason contractor through its various programs aiding members to maintain their competitive edge against other construction methods.

The ASA, founded in 1966, is an IRS section 501(c)(6) non-profit, national, membership trade association of construction specialty trade contractors, suppliers, and service providers in the United States and Canada. It charters local chapters and

state organizations across the United States, and its national headquarters is located in Alexandria, Virginia.

This case involves an issue of profound importance to the construction industry: as requested by the American Federation of Labor and Congress of Industrial Organizations (“Petitioner”), whether this Court is compelled to force OSHA to issue an ETS applicable to *all employers* in the United States to protect employees from infectious diseases, and most specifically COVID-19. Should the Court grant the Petition, the construction *amici* will be directly impacted as employers. Moreover, the construction *amici’s* members, as employers in residential and commercial construction operating throughout the country, will be significantly impacted.

Many of the construction *amici’s* members have been deemed essential by state and local governments during the COVID-19 pandemic and, thus, have continued to work. The construction *amici* and its members have a strong interest in this case and believe they can provide a unique viewpoint to the Court. The construction industry can speak first-hand to how it has handled the COVID-19 pandemic over the last several months, given the critical nature of the industry. Given these facts, construction *amici* are well-positioned to assist the Court in understanding the important legal and policy issues presented in this case.

For the reasons set forth above, and without objection from either party in the

case, the construction *amici* respectfully request that the Motion for Leave to File *Amicus Curiae* Brief be granted.

Dated: May 29, 2020

Respectfully submitted,

LITTLER MENDELSON, P.C.

/s/ Bradford T. Hammock

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2020, I electronically filed the foregoing *Motion for Leave to File Amicus Brief* with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

/s/ Bradford T. Hammock

Bradford T. Hammock