

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALE-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

*v.*

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**APPENDIX TO PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT**

**APPENDIX TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Declaration of Marc Freedman  
(Chamber of Commerce of the United States of America) ..... A001

Declaration of Matthew T. Meadors  
(Greater Waco Chamber of Commerce) ..... A007

Declaration of Kelly Rose Hall  
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Declaration of Jennifer C. Gibson  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF MARC  
FREEDMAN**

1. I, Marc Freedman, declare based on personal knowledge as follows:

2. I am the Vice President of Workplace Policy in the Employment Policy Division at the United States Chamber of Commerce (the "Chamber"). In that capacity, I lead the Chamber's work on workplace policy, including occupational safety and health policy. My business address is 1615 H Street, N.W. Washington, D.C. 20062-2000.

3. I am offering this declaration in support of the Chamber in the above-captioned case.

4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of the Chamber. If called as a witness, I could and would testify competently thereto.

#### **THE CHAMBER AND ITS MISSION**

5. The Chamber is the world's largest business federation, representing approximately 300,000 direct members, some of whom are also members of other Plaintiffs in the above-captioned matter. The U.S. Chamber represents the interests of its members nationwide, who, in turn, represent more than three million U.S. businesses and professional organizations of every size and in every economic sector and geographic region of the country.

6. The Chamber's mission, which it has advanced for more than 100 years, is to advocate for policies designed to help businesses create jobs and grow the national economy. The Chamber furthers this mission through leading pro-business initiatives on legislation and regulation, and to this end, regularly brings litigation against federal, state, and local governments to challenge government action that harms its members, such as its current

challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

#### **THE WALKAROUND RULE'S EFFECTS ON THE CHAMBER'S MEMBERS**

7. I am aware of the Walkaround Rule that is the subject of the above-captioned case. The Chamber filed comments opposing the proposed rule during the notice-and-comment period. *See* Comment from the U.S. Chamber of Commerce, Comment ID OSHA-2023-0008-1952 (Nov. 13, 2023).

8. The Walkaround Rule creates new rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

9. Nearly every one of the Chamber's members is an employer subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. And the Chamber's members have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future. For example, Chamber member FedEx has been the subject of OSHA inspections, including in Texas; FedEx will also have to prepare to permit third-party access to its worksites under the new Walkaround Rule. Accordingly, the Chamber's members are the direct objects of the Walkaround Rule and will experience its effects.

10. The Walkaround Rule appropriates the Chamber's members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these

individuals has a formal relationship with the government. Yet, under the Rule, the Chamber's members will be required to allow these individuals access to their facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms the Chamber's members; but for the Walkaround Rule, the Chamber's members would not be forced to allow these third parties to access their private property.

11. The Rule also forces the Chamber's members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. The Chamber's members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. The Chamber's members would be left to choose between consenting to the inspection or risking a contempt citation. Chamber members object to unauthorized third parties accessing their worksites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

12. Moreover, to prepare for the Walkaround Rule's expanded right of third-party access, the Chamber's members have incurred and imminently will incur additional substantial costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access.

13. For example, Chamber member FedEx will need to:

a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;

b. prepare to provide more third parties with training, especially regarding worksite safety practices;

c. prepare to supply more third parties with personal protective equipment (PPE);

d. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;

e. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;

f. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;

g. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;

h. engage counsel to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance; and

i. update handbooks, policies, and other practices and processes.

14. On expansive or remote worksites where transportation is required to effectively conduct an inspection, Chamber members will need to provide that transportation to more individuals than they would without the Walkaround Rule.


15. If the Walkaround Rule is not vacated, then FedEx and many other Chamber members will incur these unrecoverable costs. But if the Rule is vacated, FedEx and other

Chamber members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

16. Accordingly, the new Walkaround Rule harms the Chamber's members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 28, 2024, in Washington, D.C.

  
By: \_\_\_\_\_  
Marc Freedman



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF Matthew T. Meadors**

1. I, Matthew T. Meadors, declare based on personal knowledge as follows:
2. I am the President and CEO at the Greater Waco Chamber of Commerce (“Greater Waco Chamber”). In that capacity, I lead the Greater Waco Chamber’s work on all aspects of workplace policy, including occupational safety and health policy. My business address is 101 S. 3<sup>rd</sup> Street, Waco, Texas, 76701, located in Downtown Waco.
3. I am offering this declaration in support of the Greater Waco Chamber in the above-captioned case.
4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of the Greater Waco Chamber. If called as a witness, I could and would testify competently thereto.

#### **THE GREATER WACO CHAMBER AND ITS MISSION**

5. The Greater Waco Chamber is celebrating its 125<sup>th</sup> year of service to the Greater Waco community, and currently represents 1,317 direct members, many of whom are additionally members of other Chambers of Commerce and industry associations. The Greater Waco Chamber represents the interests of its members spanning multiple counties in the State of Texas.
6. The Greater Waco Chamber of Commerce advocates for business interests through relevant public policy, specifically including those efforts that reduce uncertainty in the regulatory environment and provide clarity to local employers so that they may grow and prosper in the Greater Waco community. The Greater Waco Chamber also fosters leadership and workforce development, and supports economic development through recruitment, retention, and expansion efforts. It partners with educational institutions, state agencies, and various organizations to generate prosperity. The aforementioned public

policy mission includes leading pro-business initiatives on legislation and regulation, as well as litigation against federal, state, and local governments to challenge government action that harms its members, such as its current challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

**THE WALKAROUND RULE'S EFFECTS ON THE GREATER WACO CHAMBER'S MEMBERS**

7. I am aware of the Walkaround Rule that is the subject of the above-captioned case.

8. The Walkaround Rule broadens the rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

9. Many members of the Greater Waco Chamber are employers subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. The Greater Waco Chamber's members, such as SJS Partnership d/b/a/ WRS Group Ltd., have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future. Accordingly, the Greater Waco Chamber's members are the direct objects of the Walkaround Rule and will experience its effects now that it has gone into effect.

10. The Walkaround Rule appropriates the Greater Waco Chamber's members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule, the

Greater Waco Chamber's members will be required to allow these individuals access to their facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms these employers; but for the Walkaround Rule, the Greater Waco Chamber's members would not be forced to allow these third parties to access their private property.

11. The Rule also forces the Greater Waco Chamber's members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. These employers fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. The Greater Waco Chamber's members would be left to choose between consenting to the inspection or risking a contempt citation. These Greater Waco Chamber members object to unauthorized third parties accessing their worksites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

12. Moreover, to prepare for the Walkaround Rule's expanded right of third-party access, Greater Waco Chamber members have either incurred and/or imminently will incur additional substantial costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access.

13. For example, Greater Waco Chamber members will need to:

- a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;

b. prepare to provide more third parties with training, especially regarding worksite safety practices;

c. prepare to supply more third parties with personal protective equipment (PPE);

d. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;

e. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;

f. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;

g. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;

h. engage counsel to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance; and

i. update handbooks, policies, and other practices and processes.

14. On expansive or remote worksites where transportation is required to effectively conduct an inspection, the Greater Waco Chamber members will need to provide that transportation to more individuals than they would without the Walkaround Rule.

15. If the Walkaround Rule is not vacated, then Greater Waco Chamber members will incur these unrecoverable costs. But if the Rule does not go into effect, Greater Waco

Chamber members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

16. Accordingly, the new Walkaround Rule both harms the Greater Waco Chamber's members and negatively impacts the Greater Waco Chamber of Commerce's mission to generate prosperity in the Greater Waco community.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 21, 2024, in Waco, Texas.

By:   
Matthew T. Meadors  
President & CEO, Greater Waco  
Chamber of Commerce

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF KELLY ROSE HALL**

1. I, Kelly Rose Hall Name, declare based on personal knowledge as follows:

2. I am the President/CEO at the Longview Chamber of Commerce]. In that capacity, I lead the Longview Chamber of Commerce's work on all aspects of workplace policy, including occupational safety and health policy. My business address is 410 N Center St., Longview TX 75601.

3. I am offering this declaration in support of the Longview Chamber of Commerce in the above-captioned case.

4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of the business records of the Longview Chamber of Commerce. If called as a witness, I could and would testify competently thereto.

#### **THE LONGVIEW CHAMBER OF COMMERCE AND ITS MISSION**

5. The Longview Chamber of Commerce is an advocacy organization who believe in protecting the business environment to encourage free enterprise, representing approximately 1,000 direct members and over 50,000 employees, some of whom are also members of Plaintiffs Chamber of Commerce of the United States of America, and other Plaintiffs in the above-captioned action.

6. The Longview Chamber of Commerce believes in leading business and fostering prosperity by engaging in and promoting projects that have a positive economic impact on the Longview Trade Area. It opposes legislation and regulation that would increase the already-considerable burden on employers regarding occupational safety and health administration (OSHA) requirements. The Longview Chamber of Commerce furthers this mission through leading pro-business initiatives on legislation and regulation, as well as litigation against federal, state, and local governments to challenge government action



that harms its members, such as its current challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

**THE WALKAROUND RULE'S EFFECTS ON THE LONGVIEW CHAMBER OF COMMERCE'S MEMBERS**

7. I am aware of the Walkaround Rule that is the subject of the above-captioned case.

8. The Walkaround Rule broadens the rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

9. Nearly every one of the Longview Chamber of Commerce's members is an employer subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. And the Longview Chamber of Commerce's members have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future. For example, Longview Chamber of Commerce member LeBus International Inc. has been the subject of an OSHA inspection and was required to permit third-party access to its facility during that inspection as a representative of its employees; LeBus International, Inc. will also have to prepare to permit third-party access to its worksites under the new Walkaround Rule. Accordingly, the Longview Chamber of Commerce's members are the direct objects of the Walkaround Rule and will experience its effects as soon as it goes into effect on May 31, 2024.

10. The Walkaround Rule appropriates the Longview Chamber of Commerce's members' property rights for the use of third parties such as union representatives,

community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule, the Longview Chamber of Commerce's members will be required to allow these individuals access to their facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms the Longview Chamber of Commerce's members; but for the Walkaround Rule, the Longview Chamber of Commerce's members would not be forced to allow these third parties to access their private property.

11. The Rule also forces the Longview Chamber of Commerce's members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. The Longview Chamber of Commerce's members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. The Longview Chamber of Commerce's members would be left to choose between consenting to the inspection or risking a contempt citation. Longview Chamber of Commerce members object to unauthorized third parties accessing their worksites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

12. Moreover, to prepare for the Walkaround Rule's expanded right of third-party access, the Longview Chamber of Commerce's members have incurred and imminently will incur additional substantial costs. These costs will center around

preparing to account for the different and greater risks associated with greatly expanded third-party access.

13. For example, Longview Chamber of Commerce members will need to:
  - a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;
  - b. prepare to provide more third parties with training, especially regarding worksite safety practices;
  - c. prepare to supply more third parties with personal protective equipment (PPE);
  - d. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;
  - e. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;
  - f. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;
  - g. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;
  - h. engage counsel to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance; and
  - i. update handbooks, policies, and other practices and processes.

14. On expansive or remote worksites where transportation is required to effectively conduct an inspection, Longview Chamber of Commerce] members will need to provide that transportation to more individuals than they would without the Walkaround Rule.

15. If the Walkaround Rule is not vacated, then Longview Chamber of Commerce members will incur these unrecoverable costs. But if the Rule does not go into effect, Longview Chamber of Commerce members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

16. Accordingly, the new Walkaround Rule harms the Longview Chamber of Commerce's members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 24, 2024, in Longview, TX.

By: Kelly Rose Hall  
Kelly Rose Hall

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF JENNIFER C.  
GIBSON**

1. I, Jennifer C. Gibson, declare based on personal knowledge as follows:

2. I am the Senior Vice President, Regulatory Affairs at the National Association of Chemical Distributors d/b/a the Alliance for Chemical Distribution (ACD). In that capacity, I lead the ACD's work on all aspects of workplace policy, including occupational safety and health policy. My business address is 4201 Wilson Boulevard, Suite 515, Arlington, Virginia 22203.

3. I am offering this declaration in support of the ACD in the above-captioned case.

4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of the ACD. If called as a witness, I could and would testify competently thereto.

**THE NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR  
CHEMICAL DISTRIBUTION AND ITS MISSION**

5. The National Association of Chemical Distributors d/b/a Alliance for Chemical Distribution is a trade association of more than 400 chemical distribution industry members that provides the education, connection, standards, and advocacy needed to responsibly move the essential products our world depends on. As leaders in the \$27 billion chemical distribution industry, ACD member companies commit to the highest standards in quality, safety, sustainability, and performance through ACD Responsible Distribution™. Some of ACD's members are also members of Plaintiff International Warehouse Logistics Association.

6. ACD's mission is to promote excellence among the experts the world depends on to safely and reliably process, formulate, repackage, warehouse, transport, and market

the high-quality chemical products essential to our daily lives. The ACD furthers this mission through leading pro-business initiatives on legislation and regulation, as well as litigation against federal, state, and local governments to challenge government action that harms its members, such as its current challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

### **THE WALKAROUND RULE'S EFFECTS ON THE ACD'S MEMBERS**

7. I am aware of the Walkaround Rule that is the subject of the above-captioned case. The ACD filed comments opposing the proposed rule during the notice-and-comment period. *See* Comment from Gibson, Jennifer; Alliance for Chemical Distribution (ACD), Comment ID OSHA-2023-0008-1781 (Nov. 13, 2023).

8. The Walkaround Rule broadens the rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

9. Nearly every one of the ACD's members is an employer subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. And the ACD's members have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future. For example, ACD member Palmer Logistics, headquartered in Pasadena, Texas, and with several additional locations throughout Texas, has been subject to OSHA inspections. Palmer Logistics will need to prepare to permit third-party access to its worksites under the new Walkaround Rule. Accordingly, the ACD's



members are the direct objects of the Walkaround Rule and will soon experience its effects if they have not already.

10. The Walkaround Rule appropriates the ACD's members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule, the ACD's members will be required to allow these individuals access to their facilities—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms the ACD's members; but for the Walkaround Rule, the ACD's members would not be forced to allow these third parties to access their private property.

11. The Rule also forces the ACD's members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. The ACD's members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. The ACD's members would be left to choose between consenting to the inspection or risking a contempt citation. ACD members object to unauthorized third parties accessing their worksites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

12. Moreover, to prepare for the Walkaround Rule's expanded right of third-party access, the ACD's members have incurred and imminently will incur additional substantial

costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access.

13. For example, ACD members, including Palmer Logistics, will need to:
  - a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;
  - b. prepare to provide more third parties with training, especially regarding worksite safety practices;
  - c. prepare to supply more third parties with personal protective equipment (PPE);
  - d. re-evaluate their site security plans to consider the potential increase in individuals touring their sites since they store sensitive chemicals subject to federal security regulations;
  - e. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;
  - f. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;
  - g. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;
  - h. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;

i. engage counsel to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance; and

j. update handbooks, policies, and other practices and processes.

14. On expansive or remote worksites where transportation is required to effectively conduct an inspection, ACD's members will need to provide that transportation to more individuals than they would without the Walkaround Rule.

15. If the Walkaround Rule is not vacated, then Palmer Logistics and many other ACD members will incur these unrecoverable costs. But if the Rule is vacated, Palmer Logistics and other ACD members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

16. Accordingly, the new Walkaround Rule harms the ACD's members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on 6/26/24, in Arlington, Virginia

By:



[Jennifer C. Gibson]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF Greg Sizemore**

1. I, Greg Sizemore, declare based on personal knowledge as follows:

2. I am the Vice President, Health, Safety, Environment and Workforce Development at Associated Builders and Contractors. In that capacity, I lead ABC's work on all aspects of workplace policy, including occupational safety and health policy. ABC's business address is 440 First Street, Suite 200, Washington, D.C. 20001.

3. I am offering this declaration in support of ABC in the above-captioned case.

4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of ABC. If called as a witness, I could and would testify competently thereto.

#### **ABC AND ITS MISSION**

1. ABC is a national construction industry trade association representing more than 23,000 members. Founded on the merit shop philosophy, ABC and its 67 chapters (including eight in Texas) 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 general contractors and subcontractors that perform work in the industrial and commercial sectors. The vast majority of ABC's contractor members are also small businesses who are not unionized. Some of ABC's members are also members of Plaintiffs Chamber of Commerce of the United States of America and Associated General Contractors of America. ABC represents the interests of its more than 23,000 members nationwide.

2. As set forth in ABC's bylaws, Articles 1 and 3, ABC's mission is to foster and perpetuate the principles of the Merit Shop, Open Competition and Free Enterprise, and to

encourage, develop, and protect the construction industry. This mission includes protecting the construction industry from harmful OSHA regulations. ABC furthers this mission through leading pro-business initiatives on legislation and regulation, as well as litigation against federal, state, and local governments to challenge government action that harms its members, such as its current challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

#### **THE WALKAROUND RULE'S EFFECTS ON ABC'S MEMBERS**

5. I am aware of the Walkaround Rule that is the subject of the above-captioned case. ABC filed comments opposing the proposed rule during the notice-and-comment period. *See* Comment from ABC, Comment ID OSHA-2023-0008-1946 (Nov. 13, 2023).

6. The Walkaround Rule broadens the rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

7. Nearly every one of ABC members is an employer subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. And ABC's members have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future.

8. The Walkaround Rule appropriates ABC's members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule, ABC's members will be required to

allow these individuals access to their facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms ABC’s members; but for the Walkaround Rule, ABC’s members would not be forced to allow these third parties to access their private property.

9. The Rule also forces ABC’s members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. ABC’s members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. ABC’s members would be left to choose between consenting to the inspection or risking a contempt citation. ABC’s members object to unauthorized third parties accessing their jobsites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their jobsites during OSHA inspections.

10. Moreover, to prepare for the Walkaround Rule’s expanded right of third-party access, ABC’s members have incurred and imminently will incur additional substantial costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access.

11. For example, ABC member RL National Roofing Partners, LLC will need to:
- a. review the rule to become familiar with the new legal standard for third-party access to its jobsites during OSHA inspections;
  - b. prepare to provide more third parties with training, especially regarding jobsite safety practices—construction employers are faced with serious safety concerns as

there is no guarantee under the rule that the person chosen to accompany OSHA is adequately equipped or trained to safely walk a construction jobsite;

c. prepare to supply more third parties with personal protective equipment (PPE);

d. engage counsel to assess who is legally responsible if a third party gets injured during the inspection or harms someone else; this is especially concerning on a construction jobsite as these individuals will not have the same training as OSHA inspectors to ensure they are able to safely examine the jobsite;

e. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;

f. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;

g. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;

h. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;

i. engage counsel to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance;

j. engage counsel to assess required jobsite background checks and third parties;



k. engage counsel to assess how many different third-party representatives may be present for a single inspection; and

l. update handbooks, policies, and other practices and processes.

12. On expansive or remote worksites where transportation is required to effectively conduct an inspection, ABC members will need to provide that transportation to more individuals than they would without the Walkaround Rule.

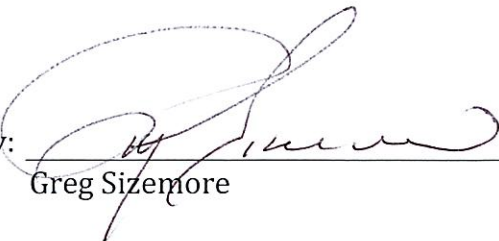
13. If the Walkaround Rule is not vacated, then RL National Roofing Partners, LLC and many ABC members will incur these unrecoverable costs. But if the Rule does not go into effect, RL National Roofing Partners, LLC and many ABC members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

14. Numerous ABC members also submitted comments in opposition to the Walkaround Rule. For example, ABC member RL National Roofing Partners, LLC submitted a public comment letter in response to the Notice of Proposed Rulemaking. The Walkaround Rule will harm RL National Roofing Partners, LLC as described above in ¶ 11 (a through l) as well as in its comment. *See* Comment ID OSHA-2023-0008- 10176 (November 10, 2023).

15. Accordingly, the new Walkaround Rule harms ABC members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 26, 2024, in Washington, D.C.

By:   
Greg Sizemore

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALE-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

*v.*

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF KEVIN  
CANNON**

1. I, KEVIN CANNON, declare based on personal knowledge as follows:

2. I am the Senior Director of Safety, Health, and Risk Management at the Associated General Contractors of America (AGC). I have been employed by AGC for more than 15 years. Throughout that time, I have served as the association's subject-matter expert on construction safety and health (S&H) issues, providing information, guidance, and resources to AGC members on a broad range of S&H matters. I serve as AGC's primary liaison with federal agencies, standard-setting organizations, coalitions, and industry representatives on S&H issues. I also oversee AGC's response to regulatory and legislative issues affecting construction S&H issues. My business address is 2300 Wilson Boulevard, Suite 300, Arlington, VA, 22201.

3. I am offering this declaration in support of the AGC in the above-captioned case.

4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my communications with AGC staff, chapter staff, and its member-firm employees. If called as a witness, I could and would testify competently thereto.

#### **AGC AND ITS MISSION**

5. Founded in 1918, AGC is the nation's largest and most diverse trade association in the commercial construction industry, now representing more than 28,000 member companies that include general contractors, specialty contractors, and service providers and suppliers to the industry through a nationwide network of chapters in all 50 states (including 11 chapters in Texas), the District of Columbia,

and Puerto Rico. AGC represents both union- and open-shop employers engaged in building, heavy, civil, industrial, utility, and other construction for both public and private property owners and developers. Some of AGC's members are also members of the Plaintiffs Chamber of Commerce of the United States of America and Associated Builders and Contractors, Inc.

6. AGC's mission is to serve our nation's construction professionals, and, therefore, the public interest, by promoting the skill, integrity, and responsibility of those who build America. AGC furthers this mission by providing education and training for member firms and through leading pro-business initiatives on legislation and regulation, as well as litigation against federal, state, and local governments to challenge government action that harms its members, such as its current challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

#### **THE SALLMAN LETTER'S EFFECTS ON THE AGC'S MEMBERS**

7. I am familiar with 2013 Sallman letter (also known as the Fairfax Memo), in which the Occupational Safety and Health Administration (OSHA) previously attempted to expand walkaround rights for unauthorized third parties, especially union representatives.

8. The Sallman letter determined that a worker "could authorize a person affiliated with a union or community organization to act as his representative" during an OSHA inspection.

9. Pursuant to the Sallman letter, OSHA began permitting union organizers to accompany inspections of non-union worksites.

10. In response to the Sallman letter, AGC and other members of the Coalition for Workplace Safety issued a June 12, 2013, correspondence to then-OSHA Assistant Secretary Dr. David Michaels, opposing this policy change, arguing that it was implemented without transparency or rulemaking and posed significant challenges for employers by potentially undermining the safety focus of inspections and introducing legal and security risks.

#### **THE WALKAROUND RULE'S EFFECTS ON THE AGC'S MEMBERS**

11. I am aware of the Walkaround Rule that is the subject of the above-captioned case. AGC filed comments opposing the proposed rule during the notice-and-comment period. *See* Comment from the Construction Industry Safety Coalition (CISC), on which AGC serves as a steering committee member, Comment ID OSHA-2023-0008-1955 (Nov. 15, 2023).

12. The Walkaround Rule broadens the rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

13. Nearly every one of AGC's members is an employer subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each

year. And AGC's members have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future. For example, AGC's member Martinez Construction Services, a Small Business Administration (SBA) Certified 8(a)/8(m) contractor, was the subject of a recent OSHA inspection. Martinez Construction is preparing to permit third-party access to its worksites under the new Walkaround Rule and taking steps to mitigate the company's risk and potential legal liability, as further outlined below. Accordingly, AGC's members are the direct objects of the Walkaround Rule and will experience its effects now that it has gone into effect.

14. As an SBA Certified 8(a)/8(m) contractor, Martinez Construction's lack of sufficient resources to anticipate and address all potential legal risks and liabilities associated with permitting an unvetted, non-employee third party onto an active construction job site poses significant challenges. This unpredictability could severely impact Martinez Construction's operational efficiency, safety protocols, and compliance standards. Additionally, it presents substantial resource and financial burdens, ultimately hindering the firm's ability to successfully complete projects and fulfill its commitments under the 8(a)/8(m) program.

15. The Walkaround Rule also appropriates the AGC's members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule, AGC's members will be required to allow these individuals access to their

facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms AGC’s members; but for the Walkaround Rule, AGC’s members would not be forced to allow these third parties to access their private property.

16. The Rule also forces AGC’s members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. AGC’s members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. AGC’s members would be left to choose between consenting to the inspection or risking a contempt citation. AGC’s members object to unauthorized third parties accessing their worksites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

17. In addition, several AGC Chapters are engaged in formal OSHA Partnership agreements wherein AGC member participants receive benefits including: maximum penalty reduction as allowed by the OSHA Field Operations Manual (FOM) for good faith and history; priority consideration for compliance and offsite technical assistance; eligibility for focused inspections during programmed inspections; and the ability to request informal conferences with the appropriate Area Director to discuss any proposed citations; among additional benefits as specified in the agreement. The partnership along with the associated benefits could be



jeopardized and terminated for any participating member company who exercises their rights and requests a warrant for an inspection accompanied by a third party under the Rule, per the terms of the partnership agreement.

18. Moreover, to prepare for the Walkaround Rule's expanded right of third-party access, AGC's members have incurred and imminently will incur additional substantial costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access.

19. For example, AGC's members will need to:

a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;

b. prepare to provide more third parties with training, especially regarding worksite safety practices;

c. prepare to supply more third parties with personal protective equipment (PPE);

d. engage counsel or consultants to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property (e.g., data center construction projects; most federal government procurement projects);

e. engage counsel or consultants to assess and mitigate potential legal risks arising from violations of property owner's security measures (including physical, technical, and organizational safeguards) often mandated by clients (e.g., tech firms, healthcare providers) and government agencies on critical infrastructure

security/resilience projects due to different and more third parties who can access their property;

f. engage counsel or consultants to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;

g. engage counsel or consultants to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;

h. engage counsel or consultants to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;

i. engage counsel or consultants to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance;

j. engage counsel or consultants to assess construction contract language to plan for and prevent financial delay claims/damages resulting from productivity losses and failing to complete work on time, due to increased access rights for third parties and the associated administrative burdens on multiemployer construction jobsites; and

k. update handbooks, policies, and other practices and processes, and provide training to management and field supervision on how to handle inspections that include third parties.

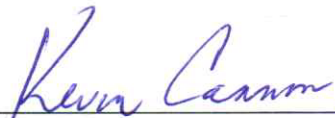
20. On expansive or remote worksites (e.g., marine construction such as barge fabrication, highway projects, etc.) where transportation is required to conduct an inspection effectively, AGC's members will need to provide that transportation to more individuals than they would without the Walkaround Rule.

21. If the Walkaround Rule is not vacated, then Martinez Construction and many other AGC members will incur these unrecoverable costs. But if the Rule does not go into effect, Martinez Construction and other AGC members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

22. Accordingly, the new Walkaround Rule harms AGC's members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 26, 2024, in ARLINGTON, VIRGINIA.

By:   
[Kevin Cannon]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF SARAH DAVIES**

1. I, Sarah Davies, declare based on personal knowledge as follows:

2. I am the General Counsel at the International Franchise Association. In that capacity, I lead the International Franchise Association's work on all aspects of workplace policy, including occupational safety and health policy. My business address is 1900 K St. NW, Suite 700, Washington, D.C. 20006.

3. I am offering this declaration in support of the International Franchise Association in the above-captioned case.

4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of the International Franchise Association. If called as a witness, I could and would testify competently thereto.

#### **THE INTERNATIONAL FRANCHISE ASSOCIATION AND ITS MISSION**

5. The International Franchise Association is the world's oldest and largest organization representing franchising. Its 11,861 members include franchisors, franchisees and suppliers to franchise systems, some of whom are also members of Plaintiffs Chamber of Commerce of the United States of America, Greater Waco Chamber of Commerce, Longview Chamber of Commerce, and National Retail Federation. There are more than 800,000 franchised businesses operating in the U.S. across hundreds of industries, including restaurants, lodging, retail, personal services, business services, real estate, and commercial and residential services, among others. These businesses accounting for nearly 8.7 million direct jobs and \$858.5 billion of economic output for the U.S. economy.

6. The International Franchise Association's mission is to protect, promote and enhance the franchise model. The International Franchise Association furthers this mission through leading pro-business initiatives on legislation and regulation, as well as litigation

against federal, state, and local governments to challenge government action that harms its members, such as its current challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

**THE WALKAROUND RULE'S EFFECTS ON  
THE INTERNATIONAL FRANCHISE ASSOCIATION'S MEMBERS**

7. I am aware of the Walkaround Rule that is the subject of the above-captioned case. The Walkaround Rule broadens the rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

8. Nearly every one of the International Franchise Association's members is an employer subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. And the International Franchise Association's members have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future. The International Franchise Association's members will incur significant costs of compliance with the Walkaround Rule, including costs incurred to prepare to permit third-party access to its worksites under the new Walkaround Rule. Accordingly, the International Franchise Association's members are the direct objects of the Walkaround Rule and will experience its effects.

9. The Walkaround Rule appropriates the International Franchise Association's members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule,

the International Franchise Association's members will be required to allow these individuals access to their facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms the International Franchise Association's members; but for the Walkaround Rule, the International Franchise Association's members would not be forced to allow these third parties to access their private property.

10. The Rule also forces the International Franchise Association's members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. The International Franchise Association's members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. The International Franchise Association's members would be left to choose between consenting to the inspection or risking a contempt citation. The International Franchise Association's members object to unauthorized third parties accessing their worksites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

11. Moreover, to prepare for the Walkaround Rule's expanded right of third-party access, the International Franchise Association's members have incurred and imminently will incur additional substantial costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access, including without limitation access to worksites.

12. For example, the International Franchise Association's members will need to:



- a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;
- b. prepare to provide more third parties with training, especially regarding worksite safety practices;
- c. prepare to supply more third parties with personal protective equipment (PPE);
- d. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;
- e. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;
- f. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;
- g. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;
- h. engage counsel to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance; and
- i. update handbooks, policies, and other practices and processes.

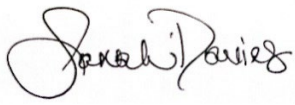
13. If the Walkaround Rule is not vacated, then the International Franchise Association's members will incur these unrecoverable costs. But if the Rule does not go into effect, the International Franchise Association's members would retain their right to exclude

unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

14. Accordingly, the new Walkaround Rule harms the International Franchise Association's members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 27, 2024, in Avon, Colorado.

By:   
\_\_\_\_\_  
Sarah Davies

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA,  
GREATER WACO CHAMBER OF  
COMMERCE, LONGVIEW CHAMBER  
OF COMMERCE, NATIONAL  
ASSOCIATION OF CHEMICAL  
DISTRIBUTORS D/B/A ALLIANCE  
FOR CHEMICAL DISTRIBUTION,  
ASSOCIATED BUILDERS AND  
CONTRACTORS, INC., ASSOCIATED  
GENERAL CONTRACTORS OF  
AMERICA, INTERNATIONAL  
FRANCHISE ASSOCIATION INC.,  
INTERNATIONAL WAREHOUSE  
LOGISTICS ASSOCIATION,  
NATIONAL ASSOCIATION OF  
MANUFACTURERS, NATIONAL  
ASSOCIATION OF WHOLESALER-  
DISTRIBUTORS, NATIONAL  
FEDERATION OF INDEPENDENT  
BUSINESS, INC., NATIONAL RETAIL  
FEDERATION,

*Plaintiffs,*

v.

OCCUPATIONAL SAFETY AND  
HEALTH ADMINISTRATION, UNITED  
STATES DEPARTMENT OF LABOR,  
JULIE A. SU, in her official capacity as  
Acting Secretary of Labor, and  
DOUGLAS L. PARKER, in his official  
capacity as Assistant Secretary of Labor  
for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

DECLARATION OF JAY  
STROTHER

1. I, Jay Strother, declare based on personal knowledge as follows:

2. I am the President & CEO at the International Warehouse Logistics Association (IWLA). In that capacity, I lead IWLA's work on all aspects of workplace policy, including occupational safety and health policy. My business address is 2800 S. River Road, Suite 260, Des Plaines, IL 60018.

3. I am offering this declaration in support of IWLA in the above-captioned case.

4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of IWLA. If called as a witness, I could and would testify competently thereto.

#### THE INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION AND ITS MISSION

5. Founded in 1891, IWLA is the trade association representing the interests of warehouse-based third-party logistics (3PL) providers across North America, representing approximately 4,500 direct members, some of whom are also members of Plaintiffs Chamber of Commerce of the United States of America, National Association of Chemical Distributors d/b/a Alliance for Chemical Distribution, and National Federation of Independent Business, Inc.

6. The mission of IWLA is to assist its Warehouse and Partner Members in running successful warehouse-based logistics services businesses, and to promote the general business interests of persons, firms and corporations engaged in public and contract warehousing and related warehouse logistics services, and to promote a high standard of business ethics. IWLA furthers this mission through leading pro-business

initiatives on legislation and regulation, as well as litigation against federal, state, and local governments to challenge government action that harms its members, such as its current challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

#### THE SALLMAN LETTER'S EFFECTS ON THE IWLA'S MEMBERS

7. I am familiar with 2013 Sallman letter (also known as the Fairfax Memo), in which the Occupational Safety and Health Administration (OSHA) previously attempted to expand walkaround rights for unauthorized third parties, especially union representatives.

8. The Sallman letter determined that a worker “could authorize a person affiliated with a union or community organization to act as his representative” during an OSHA inspection.

9. Pursuant to the Sallman letter, OSHA began permitting union organizers to accompany inspections of non-union worksites.

10. In response to the Sallman letter, employers took several steps to prepare for third-party access to their worksites during OSHA walkaround inspections. For example, IWLA member Palmer Logistics had to update its entire emergency response plan and security protocols due to the presence of hazardous materials in the warehouse. Additional security restrictions had to be implemented to account for the presence of chemicals of interest, which may release toxic, flammable, or explosive chemicals or materials, as defined by the United States Department of Homeland Security, as well as Drug Enforcement Agency regulated

substances on site, subject to the Controlled Substances Act, due to the potential presence of unauthorized third-parties.

11. IWLA's members will take similar and additional actions in preparation for expanded third-party access to employer worksites under the new Walkaround Rule.

#### THE WALKAROUND RULE'S EFFECTS ON IWLA'S MEMBERS

12. I am aware of the Walkaround Rule that is the subject of the above-captioned case. IWLA filed comments opposing the proposed rule during the notice-and-comment period. *See* Comment from IWLA, Comment ID OSHA-2023-1780 (Nov. 13, 2023).

13. The Walkaround Rule broadens the rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

14. Nearly every one of IWLA's members is an employer subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. And IWLA's members have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future. And IWLA's members will have to prepare to permit third-party access to its worksites under the new Walkaround Rule, oftentimes in the presence of hazardous materials that are highly regulated and/or require strict security measures. Accordingly, IWLA's

members are the direct objects of the Walkaround Rule and will experience its effects now that it has gone into effect.

15. The Walkaround Rule appropriates IWLA's members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule, IWLA's members will be required to allow these individuals access to their facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms IWLA's members; but for the Walkaround Rule, IWLA's members would not be forced to allow these third parties to access their private property.

16. The Rule also forces IWLA's members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. IWLA's members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. IWLA's members would be left to choose between consenting to the inspection or risking a contempt citation. IWLA members object to unauthorized third parties accessing their worksites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

17. Moreover, to prepare for the Walkaround Rule's expanded right of third-party access, IWLA's members have incurred and imminently will incur additional substantial costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access.

18. For example, IWLA member Palmer Logistics will need to:

a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;

b. prepare to provide more third parties with training, especially regarding worksite safety practices;

c. prepare to supply more third parties with personal protective equipment (PPE);

d. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;

e. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;

f. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;

g. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;



h. engage counsel to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance; and

i. update handbooks, policies, and other practices and processes.

19. On expansive or remote worksites where transportation is required to effectively conduct an inspection, IWLA members will need to provide that transportation to more individuals than they would without the Walkaround Rule.

20. If the Walkaround Rule is not vacated, then Palmer Logistics and many other IWLA members will incur these unrecoverable costs. But if the Rule does not go into effect, Palmer Logistics and other IWLA members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

21. Accordingly, the new Walkaround Rule harms IWLA's members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 26, 2024, in Des Plaines, Illinois.

By: 

Jay Strother

6/26/2024

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF CHRISTOPHER  
NETRAM**

1. I, Christopher Netram, declare based on personal knowledge as follows:

2. I am the Managing Vice President, Policy at the National Association of Manufacturers (NAM). In that capacity, I lead the NAM's policy work on all issues relating to manufacturing, including occupational safety and health policy. As part of that responsibility, I ensure the manufacturing voice is brought to legislative and regulatory issues before Congress and the Executive Branch. I am also in regular conversations with the NAM's membership on how proposed and final regulations will impact their business operations. My business address is 733 10th Street, NW, Suite 700, Washington, DC 20001.

3. I am offering this declaration in support of the NAM in the above-captioned case.

4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of the NAM. If called as a witness, I could and would testify competently thereto.

#### **THE NAM AND ITS MISSION**

5. The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 13 million men and women, contributes \$2.89 trillion to the U.S. economy annually and accounts for over half of private sector research and development. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. The NAM furthers this mission through leading pro-manufacturing initiatives on legislation and regulation, as well as litigation to challenge government action that harms its members, such as its current challenge to *Worker*

*Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

### **THE WALKAROUND RULE'S EFFECTS ON THE NAM'S MEMBERS**

6. I am aware of the Walkaround Rule that is the subject of the above-captioned case. The NAM filed comments opposing the proposed rule during the notice-and-comment period. *See* Comment from the NAM, Comment ID OSHA-2023-0008-1953 (Nov. 13, 2023).

7. The Walkaround Rule broadens the criteria by which third parties may be granted access to employer worksites during inspections carried out by the Occupational Safety and Health Administration (OSHA), allowing an indeterminate number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors.

8. The NAM and nearly every one of the NAM's members is an employer subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. And the NAM's members have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future.

9. For example, in the 2013 Sallman letter (also known as the Fairfax Memo), OSHA previously attempted to expand walkaround rights pertaining to unauthorized third parties, especially union representatives. The Sallman letter determined that a worker could "authorize a person who is affiliated with a union or community organization to act as their representative" during an OSHA inspection. And, pursuant to the Sallman letter, OSHA permitted union organizers to accompany inspections of non-union worksites. On multiple separate occasions between approximately October 2013 and February 2014, an OSHA

inspector appeared at a non-union Texas worksite of NAM member Professional Janitorial Services, Inc. (PJS) accompanied by nonemployee representatives from the Service Employees International Union. PJS was required to permit third-party access to its worksite.

10. PJS and other NAM members will have to prepare to permit third-party access to its worksites under the new Walkaround Rule. Accordingly, the NAM's members are the direct objects of the Walkaround Rule.

11. The Walkaround Rule appropriates the NAM's members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule, the NAM's members will be required to allow these individuals access to their facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms the NAM's members; but for the Walkaround Rule, the NAM's members would not be forced to allow these third parties to access their private property.

12. The Rule also forces the NAM's members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. The NAM's members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. The NAM's members would be left to choose between consenting to the inspection or risking a contempt citation. The NAM's members object to unauthorized third parties accessing their worksites, but they fear

incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

13. Moreover, to prepare for the Walkaround Rule's expanded right of third-party access, the NAM's members have incurred and imminently will incur additional costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access.

14. For example, NAM members will need to do one or more of the following:

a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;

b. prepare to provide more third parties with training, especially regarding worksite safety practices;

c. prepare to supply more third parties with personal protective equipment (PPE);

d. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;

e. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;

f. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;

g. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;

h. engage counsel to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance;

i. update handbooks, policies, and other practices and processes; or

j. provide transportation to expansive or remote worksites where transportation is required for more individuals than they would without the Walkaround Rule.

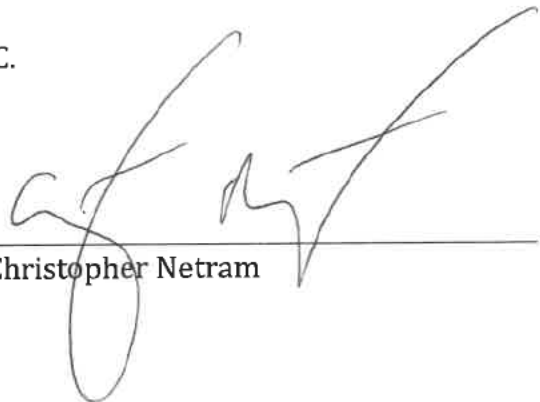
15. If the Walkaround Rule is not vacated, then the NAM's members will incur these unrecoverable costs. But if the Rule does not go into effect, the NAM's members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

16. Accordingly, the new Walkaround Rule harms the NAM's members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 27, 2024, in Washington, DC.

By:

  
\_\_\_\_\_  
Christopher Netram

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF BRIAN WILD**



1. I, Brian Wild, declare based on personal knowledge as follows:

2. I am the Chief Government Relations Officer at the National Association of Wholesaler-Distributors ("NAW"). In that capacity, I lead the NAW's work on all aspects of workplace policy, including occupational safety and health policy. My business address is 1325 G Street, N.W., #1000, Washington, D.C. 20005.

3. I am offering this declaration in support of the NAW in the above-captioned case.

4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of the NAW. If called as a witness, I could and would testify competently thereto.

#### **NAW AND ITS MISSION**

5. NAW is an employer and a nonprofit, non-stock, incorporated trade association representing companies in the wholesale and distribution industry, as well as a federation of national, regional, and state associations across 19 commodity lines of trade which together include approximately 35,000 companies operating nearly 150,000 locations throughout the nation. The overwhelming majority of wholesaler distributors are small-to-medium-size, closely held businesses. As an industry, wholesale distribution generates more than \$8 trillion in annual sales volume providing stable and well-paying jobs to more than 6 million workers.

6. NAW's mission is to deliver programs and services to help the wholesale distribution industry succeed. Members engage with NAW through our offerings in thought leadership, networking, executive education, innovation, benchmarking/research, shared resourcing, partnerships, government relations, and public affairs. NAW furthers this

mission through advancing pro-business initiatives on legislation and regulation, as well as litigation against federal, state, and local governments to challenge government action that harms its members, such as its current challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

### **THE WALKAROUND RULE'S EFFECTS ON NAW'S MEMBERS**

7. I am aware of the Walkaround Rule that is the subject of the above-captioned case. NAW filed comments opposing the proposed rule during the notice-and-comment period. *See* Comment from National Association of Wholesaler-Distributors, Comment ID OSHA-2023-0008-1933 (Nov. 13, 2023) and Comment from Coalition for Workplace Safety, Comment ID OSHA-2023-0008-1938 (Nov. 13, 2023) (NAW is a coalition member and signed onto these comments.)

8. The Walkaround Rule broadens the rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

9. Nearly every one of NAW's members is an employer subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. And NAW's members have been the subject of past OSHA inspections and will be subject to such inspections again in the future. As a result, NAW's members have started to prepare to permit third-party access to its worksites under the new Walkaround Rule. Accordingly, NAW's members are the direct objects of the Walkaround Rule and will experience its effects now that it has gone into effect.

10. The Walkaround Rule appropriates NAW's members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule, NAW's members will be required to allow these individuals access to their facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms NAW's members; but for the Walkaround Rule, NAW's members would not be forced to allow these third parties to access their private property.

11. The Rule also forces NAW's members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. NAW's members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. NAW's members would be left to choose between consenting to the inspection or risking a contempt citation. NAW members object to unauthorized third parties accessing their worksites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

12. Moreover, to prepare for the Walkaround Rule's expanded right of third-party access, NAW's members have incurred and imminently will incur additional substantial costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access. Indeed, on June 18, NAW held a webinar for its members in which outside counsel for NAW provided information on what

NAW members should be doing to comply with the rule. NAW also is preparing additional educational materials that it will be sharing over the coming weeks and months to help its members understand and navigate the requirements of this new rule.

13. For example, NAW's members will need to:
  - a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;
  - b. prepare to provide more third parties with training, especially regarding worksite safety practices;
  - c. prepare to supply more third parties with personal protective equipment (PPE);
  - d. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;
  - e. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;
  - f. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;
  - g. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;
  - h. engage counsel to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance; and

i. update handbooks, policies, and other practices and processes.

14. If the Walkaround Rule is not vacated, then NAW's members will incur these unrecoverable costs. But if the Rule does not go into effect, NAW members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

15. Numerous NAW members also submitted comments in opposition to the Walkaround Rule. The following NAW association members also signed onto the Coalition for Workplace Safety's comments referenced in ¶ 7 above: American Supply Association, Associated Equipment Distributors, Foodservice Equipment Distributors Association, International Foodservice Distributors Association, National Grocers Association, Textile Care Allied Trades Association, and the World Millwork Alliance.

16. Accordingly, the new Walkaround Rule harms NAW's members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 24, 2024, in Washington, D.C.

By:   
Brian Wild

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALE-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

*v.*

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF  
ELIZABETH MILITO**

1. I, Elizabeth Milito, declare based on personal knowledge as follows:
2. I am the Executive Director at the National Federation of Independent Business (NFIB) Small Business Legal Center, Inc. In that capacity, I help direct NFIB's legal and workplace advocacy, including occupational safety and health policy. My business address is 555 12th St. NW, Suite 1001, Washington, DC 20004.
3. I am offering this declaration in support of NFIB in the above-captioned case.
4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of NFIB. If called as a witness, I could and would testify competently thereto.

#### **NFIB AND ITS MISSION**

5. NFIB is the nation's leading small business association. NFIB represents nearly 300,000 members, some of whom are also members of Plaintiffs Chamber of Commerce of the United States of America, Greater Waco Chamber of Commerce, Longview Chamber of Commerce, National Association of Chemical Distributors d/b/a Alliance for Chemical Distribution, Associated Builders and Contractors, Inc., Associated General Contractors of America, International Franchise Association Inc., International Warehouse Logistics Association, the National Association of Manufacturers, National Association of Wholesaler-Distributors, and National Retail Federation. NFIB represents the interests of its members nationwide.

6. NFIB’s mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members. NFIB furthers this mission through leading pro-business initiatives on legislation and regulation, as well as litigation against federal, state, and local governments to challenge government action that harms its members, such as its current challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

#### **THE SALLMAN LETTER’S EFFECTS ON NFIB’S MEMBERS**

7. I am familiar with 2013 Sallman letter (also known as the Fairfax Memo), in which the Occupational Safety and Health Administration (OSHA) previously attempted to expand walkaround rights for unauthorized third parties, especially union representatives.

8. The Sallman letter determined that a worker “could authorize a person affiliated with a union or community organization to act as his representative” during an OSHA inspection.

9. Pursuant to the Sallman letter, OSHA began permitting union organizers to accompany inspections of non-union worksites. For example, from October 2013 to February 2014, NFIB member Professional Janitorial Services, Inc. was subject to four OSHA worksite inspections in which OSHA inspectors were accompanied by nonemployee representatives from the Service Employees International Union.



## THE WALKAROUND RULE'S EFFECTS ON NFIB'S MEMBERS

10. I am aware of the Walkaround Rule that is the subject of the above-captioned case. NFIB filed comments opposing the proposed rule during the notice-and-comment period. *See* Comment from Elizabeth Milito; National Federation of Independent Business, Inc. (NFIB), Comment ID OSHA-2023-0008-0168 (Oct. 25, 2023).

11. The Walkaround Rule broadens the rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

12. Most NFIB members are employers subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. And NFIB's members have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future. For example, NFIB member Bonn Roof Care has undergone at least four OSHA walkaround inspections. Likewise, NFIB member Rolled Threads Unlimited LLC was subject to a surprise OSHA walkaround inspection shortly after hosting a political rally for Senator Ron Johnson. Bonn Roof Care and Rolled Threads Unlimited LLC will also have to prepare to permit third-party access to their worksites under the new Walkaround Rule.

Accordingly, NFIB's members are the direct objects of the Walkaround Rule and will experience its effects now that it has gone into effect.

13. The Walkaround Rule appropriates NFIB's members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule, NFIB's members will be required to allow these individuals access to their facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms NFIB's members; but for the Walkaround Rule, NFIB's members would not be forced to allow these third parties to access their private property.

14. The Rule also forces NFIB's members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. NFIB's members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte* pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. NFIB's members would be left to choose between consenting to the inspection or risking a contempt citation. NFIB's members object to unauthorized third parties accessing their worksites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

15. Moreover, to prepare for the Walkaround Rule's expanded right of third-party access, NFIB's members have incurred and imminently will incur additional substantial costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access.

16. For example, NFIB member Bonn Roof Care will need to:

a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;

b. prepare to provide more third parties with training, especially regarding worksite safety practices;

c. prepare to supply more third parties with personal protective equipment (PPE); and

d. update handbooks, policies, and other practices and processes.

17. In addition, NFIB member Rolled Threads Unlimited LLC will need to:

a. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;

b. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;

c. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers; and

d. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys.

18. On expansive or remote worksites where transportation is required to effectively conduct an inspection, NFIB members will need to provide that transportation to more individuals than they would without the Walkaround Rule.

19. If the Walkaround Rule is not vacated, then Bonn Roof Care, Rolled Threads Unlimited LLC, and many other NFIB members will incur these unrecoverable costs. But if the Rule does not go into effect, Bonn Roof Care, Rolled Threads Unlimited LLC, and other NFIB members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

20. Accordingly, the new Walkaround Rule harms NFIB's members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 25, 2024, in Washington, D.C.

By: Elizabeth Milito  
Elizabeth Milito

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, GREATER WACO CHAMBER OF COMMERCE, LONGVIEW CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS D/B/A ALLIANCE FOR CHEMICAL DISTRIBUTION, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INTERNATIONAL FRANCHISE ASSOCIATION INC., INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION,

*Plaintiffs,*

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, JULIE A. SU, in her official capacity as Acting Secretary of Labor, and DOUGLAS L. PARKER, in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health,

*Defendants.*

No. 6:24-cv-00271-ADA-DTG

**DECLARATION OF STEPHANIE  
MARTZ**

1. I, Stephanie Martz, declare based on personal knowledge as follows:

2. I am the Chief Administrative Officer and General Counsel at the National Retail Federation (NRF). In that capacity, I lead the National Retail Federation's work on all aspects of workplace policy, including occupational safety and health policy. My business address is 1101 New York Ave., NW, 12<sup>th</sup> Floor, Washington, DC 20005.

3. I am offering this declaration in support of the National Retail Federation in the above-captioned case.

4. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of the National Retail Federation. If called as a witness, I could and would testify competently thereto.

#### **THE NATIONAL RETAIL FEDERATION AND ITS MISSION**

5. The National Retail Federation passionately advocates for the people, brands, policies and ideas that help retail succeed. 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.

6. The National Retail Federation furthers its mission through leading pro-business initiatives on legislation and regulation, as well as litigation against federal, state, and local governments to challenge government action that harms its members, such as its current challenge to *Worker Walkaround Designation Process*, 89 Fed. Reg. 22,558 (Apr. 1, 2024) (Final Rule or Walkaround Rule).

**THE SALLMAN LETTER'S EFFECTS ON THE NATIONAL RETAIL FEDERATION'S MEMBERS**

7. I am familiar with 2013 Sallman letter (also known as the Fairfax Memo), in which the Occupational Safety and Health Administration (OSHA) previously attempted to expand walkaround rights for unauthorized third parties, especially union representatives.

8. The Sallman letter determined that a worker "could authorize a person affiliated with a union or community organization to act as his representative" during an OSHA inspection.

9. Pursuant to the Sallman letter, OSHA began permitting union organizers to accompany inspections of non-union worksites.

10. In response to the Sallman letter, employers took several steps to prepare for third-party access to their worksites during OSHA walkaround inspections.

11. The National Retail Federation's members will take similar and additional actions in preparation for expanded third-party access to employer worksites under the new Walkaround Rule.

**THE WALKAROUND RULE'S EFFECTS ON THE NATIONAL RETAIL FEDERATION'S MEMBERS**

12. I am aware of the Walkaround Rule that is the subject of the above-captioned case. The National Retail Federation filed comments opposing the proposed rule during the notice-and-comment period. *See* Comment from the National Retail Federation, Comment ID OSHA-2023-0008-1776 (Nov. 13, 2023).

13. The Walkaround Rule broadens the rights of third parties to access employer worksites during OSHA inspections, allowing an unlimited number of union representatives,



community organizers, environmental activists, plaintiffs' attorneys, and even competitors to accompany inspectors on these government-mandated inspections.

14. Nearly every one of the National Retail Federation's members is an employer subject to OSHA inspections under the Occupational Safety and Health Act. *See* 29 U.S.C. § 657. The agency carries out tens of thousands of such inspections of employer worksites each year. And the National Retail Federation's members have been the subject of past OSHA walkaround inspections and will be subject to such inspections again in the future. Accordingly, the National Retail Federation's members are the direct objects of the Walkaround Rule and will experience its effects as soon as it goes into effect on May 31, 2024.

15. The Walkaround Rule appropriates the National Retail Federation members' property rights for the use of third parties such as union representatives, community organizers, environmental activists, plaintiffs' attorneys, and even competitors. None of these individuals has a formal relationship with the government. Yet, under the Rule, the National Retail Federation's members will be required to allow these individuals access to their facility—their property—without recourse. By eliminating their right to exclude third parties from their private property, the Rule directly harms the National Retail Federation's members; but for the Walkaround Rule, the National Retail Federation's members would not be forced to allow these third parties to access their private property.

16. The Rule also forces the National Retail Federation's members to choose between ceding this right of access to unauthorized third parties or potentially facing sanctions—including contempt of court—if they refuse to allow third-party access to their worksites during OSHA walkaround inspections. The National Retail Federation's members fear that OSHA inspectors may arrive at their worksites having already obtained *ex parte*

pre-inspection warrants—court orders—authorizing an inspection with a third-party representative. The National Retail Federation’s members would be left to choose between consenting to the inspection or risking a contempt citation. National Retail Federation’s members object to unauthorized third parties accessing their worksites, but they fear incurring sanctions if they do not acquiesce in allowing third-party access to their worksites during OSHA inspections.

17. Moreover, to prepare for the Walkaround Rule’s expanded right of third-party access, the National Retail Federation’s members have incurred and imminently will incur additional substantial costs. These costs will center around preparing to account for the different and greater risks associated with greatly expanded third-party access, including:

- a. review the rule to become familiar with the new legal standard for third-party access to its worksites during OSHA inspections;
- b. prepare to provide more third parties with training, especially regarding worksite safety practices;
- c. prepare to supply more third parties with personal protective equipment (PPE);
- d. engage counsel to assess and mitigate potential legal risks surrounding the disclosure of trade secrets and confidential business information to different and more third parties who can access their property;
- e. engage counsel to assess and mitigate potential legal risks surrounding the duty of care employers owe to different and more third parties who can access their property;

f. engage counsel to assess and mitigate potential labor law risks stemming from the Walkaround Rule's increased access rights for union organizers;

g. engage counsel to assess and mitigate potential litigation risks arising from the Walkaround Rule's increased access rights for plaintiffs' attorneys;

h. engage counsel to assess additional or different insurance needs stemming from the Walkaround Rule's increased access rights for third parties, and (in many instances) to expend funds purchasing additional insurance; and

i. update handbooks, policies, and other practices and processes.

18. On expansive or remote worksites where transportation is required to effectively conduct an inspection, National Retail Federation's members will need to provide that transportation to more individuals than they would without the Walkaround Rule.

19. If the Walkaround Rule is not vacated, then National Retail Federation's members will incur these unrecoverable costs. But if the Rule does not go into effect, National Retail Federation members would retain their right to exclude unauthorized third parties from accessing their worksites, spend less money on preparing to afford additional third parties with access to private workplaces, and avoid the likely consequences of opening their doors to outside union organizers, plaintiffs' attorneys, and others who are incentivized to use the expanded walkaround right to impose substantial costs on employers.

20. Accordingly, the new Walkaround Rule harms the National Retail Federation's members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 27, 2024, in Washington, DC.

By: 

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Stephanie Martz