SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S222314

SOLUS INDUSTRIAL INNOVATIONS, LLC; EMERSON POWER TRANSMISSION CORPORATION; and EMERSON ELECTRIC CO
Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE,
Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA
Real Parties in Interest.

RECEIVED
MAY 28 2015
CLERK SUPREME COURT

Petition for Review of a Decision of the Court of Appeal, Fourth Appellate District, Division 3, No. 0047661

Superior Court, County of Orange
Civil Case No. 30-2012-00581868-CU-MC-CXC

APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER IN SUPPORT OF DEFENDANT AND PETITIONER

SUPREME COURT
FILED
JUN 11 2015
Frank A. McGuire Clerk
Deputy

LUKE A. WAKE
SBN: 264647
NFIB Small Business Legal Center
921 11th Street, Suite 400
Sacramento, California 95814
Tel. (916) 448-9904
Fax: (916) 916-5104
luke.wake@nfib.org

DAMIEN M. SCHIFF
SBN: 235101
Alston & Bird LLP
1115 11th Street
Sacramento, California 95814
Tel. (916) 498-3320
Fax (213) 576-2863
damien.schiff@alston.com

Attorneys for Amicus Curiae NFIB Small Business Legal Center

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S222314

SOLUS INDUSTRIAL INNOVATIONS, LLC; EMERSON POWER TRANSMISSION CORPORATION; and EMERSON ELECTRIC CO
Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE,
Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA
Real Parties in Interest.

Petition for Review of a Decision of the Court of Appeal, Fourth Appellate District, Division 3, No. 0047661

Superior Court, County of Orange
Civil Case No. 30-2012-00581868-CU-MC-CXC

APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER IN SUPPORT OF DEFENDANT AND PETITIONER

LUKE A. WAKE
SBN: 264647
NFIB Small Business Legal Center
921 11th Street, Suite 400
Sacramento, California 95814
Tel. (916) 448-9904
Fax: (916) 916-5104
luke.wake@nfib.org

DAMIEN M. SCHIFF
SBN: 235101
Alston & Bird LLP
1115 11th Street
Sacramento, California 95814
Tel. (916) 498-3320
Fax (213) 576-2863
damien.schiff@alston.com

Attorneys for Amicus Curiae NFIB Small Business Legal Center

TABLE OF CONTENTS

APPLICATION 1

IDENTITY AND INTEREST OF *AMICUS CURIAE* 1

BRIEF *AMICUS CURIAE* OF NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER IN SUPPORT OF DEFENDANTS AND PETITIONERS 3

INTRODUCTION AND SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. THE OCCUPATIONAL SAFETY AND HEALTH ACT PREEMPTS ALL STATE REGULATION OF WORKPLACE SAFETY AND ENFORCEMENT STANDARDS 5

II. THE FEDERAL ADMINISTRATIVE PROCEDURES ACT GUARANTEES THE REGULATED COMMUNITY THE OPPORTUNITY TO COMMENT ON NEW RULES AND ENFORCEMENT STANDARDS 9

A. The Requirement of Express Department of Labor Approval Ensures the Regulated Community an Opportunity to Voice Concerns Over Unduly Burdensome Enforcement Standards 9

B. The District Attorney's Approach Would Deny the Regulated Community the Opportunity to Comment on His Desire to Impose Additional Civil Penalties for Workplace Safety Violations 11

CONCLUSION 15

CERTIFICATE OF COMPLIANCE 16

PROOF OF SERVICE 17

TABLE OF AUTHORITIES

Page(s)

CASES

Bond v. United States,
131 S. Ct. 2355 (2011) 5

California Lab. Federation v. Occupational Safety & Health Stds. Bd., 221 Cal.App.3d (1990) 8

Chrysler Corp. v. Brown,
441 U.S. 281 (1979) 10

Cipollone v. Liggett Group,
505 U.S. 504 (1992) 6

Gade v. Nat. Solid Waste Mgmt. Ass'n,
505 U.S. 88 (1992) .... passim

Hall v. U.S. E.P.A.,
273 F.3d 1146 (2001) 10

Hemp Indus. Ass'n v. DEA,
333 F.3d 1082 (9th Cir.2003) 10

In re Countrywide Financial Corp. Mortg. Marketing and Sales Practices Litigation, 601 F.Supp.2d 1201 (2009) 7

Industrial Truck Ass'n. v. Henry,
125 F.3d 1305 (9th Cir. 1997) 8

Jones v. Rath Packing Co.,
430 U.S. 519 (1977) 7

Loskouski v. State Personnel Bd.,
4 Cal.App.4th 453 (1992) 3

M'Culloch v. Maryland,
17 U.S. (4 Wheat) 316 (1819) 5

Mackey v. Lanier Collection Agency & Services, Inc.,
486 U.S. 825 (1988) 7

Miller v. California Speedway Corp.,
536 F.3d 1020 (9th Cir. 2008) 10

Page(s)

North Carolina State Bd. of Dental Examiners v. F.T.C.,
135 S.Ct. 1101 (2015) 5

Rice v. Santa Fe Elevator Corp.,
331 U.S. 218 (1947) 7

Solus Industrial Innovations, LLC v. Superior Court,
229 Cal.App.4th 1291 (2014) 12

United States v. Locke,
529 U.S. 89 (2000) 6

Washington Mutual Bank, FA v. Superior Court,
95 Cal.App.4th 606 (2002) 5

STATUTES

5 U.S.C. § 553 (2015) 9

16 U.S.C. § 1531, *et seq.* (2015) 6

29 U.S.C. § 651 .... 3, 8, 14

29 U.S.C. § 667(c) 3

42 U.S.C. § 7545(c)(4)(A) (2015) 6

Bus. & Prof. Code § 17200, *et seq.* 4

Bus. & Prof. Code § 17500, *et seq.* 4

Cal. Bus. & Prof. Code § 17206(f) 13

OTHER AUTHORITIES

62 Fed. Reg. 31,159, 31,178 (June 6, 1997) 11

Calandrillo, Steve P, *Responsible Regulation: A Sensible Cost-Benefit, Risk Versus Risk Approach to Federal Health and Safety Regulation,* 81 B.U.. L. Rev. 957 (2001) 13

California Rule of Court 8.520(f) 1

APPLICATION

Pursuant to California Rule of Court 8.520(f), the National Federation of Independent Business Small Business Legal Center (NFIB Legal Center) requests leave to file the attached brief *amicus curiae* in support of Defendant/Petitioner Solus Industrial Innovations, LLC, *et al.* NFIB Legal Center is familiar with the issues and scope of their presentation, and believes that the attached brief will aid the Court in its consideration of the issues presented in this case.[1]

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The NFIB Legal Center is a nonprofit, public interest law firm established to provide legal resources and to be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. The National Federation of Independent Business (NFIB) is the nation's leading small business association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission

---

[1] NFIB Legal Center confirms, pursuant to California Rule of Court 8.520(f)(4), that no one and no other party made any contribution of any kind to assist in the preparation of this brief or made any monetary contribution to fund the preparation of this brief.

is to promote and protect the right of its members to own, operate and grow their businesses.

NFIB represents 350,000 member businesses nationwide. Its membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. The typical NFIB member employs 10 people and reports gross sales of about $500,000 a year. The NFIB membership is a reflection of American small business.

To fulfill its role as the voice for small business, the NFIB Legal Center frequently files *amicus* briefs in cases that will affect small businesses. It seeks to file here because the case raises a question as to whether California district attorneys may bring civil actions against employers for violations of workplace safety standards, in addition to other penalties imposed by the State, under state statutes that have never been incorporated into an approved state workplace safety plan—as required by the federal Occupational Safety and Health Act. The position of the Real Party in Interest is troubling to the small business community not only because it may enable district attorneys to radically ratchet up penalties on non-compliant businesses, but also because it would deny NFIB, and the businesses it represents, any opportunity for public comment. Accordingly, NFIB Legal Center has a strong interest in the resolution of this case.

BRIEF *AMICUS CURIAE* OF NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER IN SUPPORT OF DEFENDANTS AND PETITIONERS

INTRODUCTION AND SUMMARY OF ARGUMENT

The Occupational Health and Safety Act, 29 U.S.C. § 651 et seq. ("OSH Act"), preempts state regulation of conduct relating to workplace health and safety issues where there is already a federal standard in place. *Gade v. Nat. Solid Waste Mgmt. Ass'n.*, 505 U.S. 88 (1992). The Act allows for the State of California to regulate such conduct only in conformance with a state workplace safety plan—which must be approved by the Secretary of Labor. *Loskouski v. State Personnel Bd.*, 4 Cal.App.4th 453, 456 (1992). Further, the Act advances a federal policy of sensible workplace regulation throughout the nation by permitting the Secretary to reject any state proposal that would impose undue burdens on the regulated community. 29 U.S.C. §§ 651, 667(c).

In this case, the Real Party in Interest, the District Attorney of Orange County ("District Attorney"), seeks to impose over $1 million in penalties on the Petitioners for workplace safety violations—in addition to penalties that the California Department of Industrial Relations, Division of Occupational Safety and Health ("Cal/OSHA") has already imposed. But whereas Cal/OSHA was acting pursuant to California's approved workplace safety plan, the District Attorney seeks exponentially greater

penalties without any authorization under California's approved plan. The District Attorney maintains that California's Unfair Competition Law, Bus. & Prof. Code § 17200 et seq. ("UCL"), and the False Advertising Law, Bus. & Prof. Code § 17500 et seq. ("FAL"), authorize these penalties. Moreover, he contends that these statutes are not preempted by the OSH Act because they are of "general applicability," and merely enhance penalties for businesses that violate the law. But that argument fails because the conduct allegedly triggering penalties under the FAL and UCL is within the field of subject matter that Congress chose to preempt.

NFIB maintains that if the State wishes to obtain authority to impose additional penalties under the UCL and FAL, California must seek an amendment to its approved plan. That happy approach would allow the small business community to submit comments raising serious concerns over any such proposal. And in light of such comments, the Secretary may well conclude that application of the UCL and FAL—on top of other penalties—would impose undue burdens on interstate commerce. In consideration of public comments, the Secretary might likewise refuse to certify amendments allowing district attorneys to pursue claims under the UCL and FAL on the view that such an approach would inappropriately expose businesses to multifarious enforcement actions—and potentially application of varying legal standards.

ARGUMENT

I. THE OCCUPATIONAL SAFETY AND HEALTH ACT PREEMPTS ALL STATE REGULATION OF WORKPLACE SAFETY AND ENFORCEMENT STANDARDS

Our constitutional system diffuses political power between the states and the federal government for the purpose of protecting individual rights. *See Bond v. United States*, 131 S. Ct. 2355, 2364 (2011). Under modern precedent, the states and the federal government maintain concurrent powers to regulate economic affairs; however, where state and federal law stand in conflict, the Supremacy Clause of the federal Constitution preempts state law. *M'Culloch v. Maryland*, 17 U.S. (4 Wheat) 316, 427 (1819). Thus, although the State of California generally retains its traditional police powers in most cases, California law cannot be enforced in a manner that conflicts with the provisions of a federal statute. *Washington Mutual Bank, FA v. Superior Court*, 95 Cal.App.4th 606, 612 (2002).

The Framers of the United States Constitution were primarily concerned with limiting the conferral of federal powers. *Bond*, 131 S. Ct. at 2364. The preemption doctrine, however, recognizes that in some cases a federal enactment may *preserve* freedom by displacing more burdensome state regulations. *See e.g.*, *North Carolina State Bd. of Dental Examiners v.*

F.T.C., 135 S.Ct. 1101 (2015) (holding that federal antitrust law disallows a State Board from imposing anti-competitive regulations where the Board is comprised of individuals who are actively engaged as competitors in the relevant market); *Cipollone v. Liggett Group*, 505 U.S. 504, 518 (1992) (recognizing that Congress had expressly pre-empted state regulations imposing certain labeling requirements). For federal laws enacted pursuant to the Commerce Clause, the legislative goal typically is to establish national standards for economic conduct in a manner that promotes the common good of the entire nation. *See, e.g.*, Clean Air Act, 42 U.S.C. § 7545(c)(4)(A) (2015) (though giving a waiver to California, the Act generally preempts states from regulating motor vehicle emissions); *see also United States v. Locke*, 529 U.S. 89, 112-16 (2000) (holding that federal statutes governing maritime practices preempt Washington State's regulations regarding general navigation watch procedures, English language skills, training and casualty reporting).

In some cases Congress may impose a regulatory floor, therein setting a default federal standard of conduct while preserving the states' power to impose heightened standards. *See e.g.*, Endangered Species Act, 16 U.S.C. § 1531 et seq. (2015) (setting baseline protections for threatened and endangered species). But in other cases—as with the enactment of the OSH Act—Congress may decide that the national economy is best served

by setting a consistent federal standard throughout the country. Thus, where Congress sees fit, its enactments may prohibit state and local authorities from imposing or utilizing more burdensome regulatory standards and enforcement mechanisms than are authorized by a federal enactment. *See e.g., Mackey v. Lanier Collection Agency & Services*, Inc., 486 U.S. 825, 829 (1988) (holding that "[t]he pre-emption provision [of the Employment Retirement Security Income Act] … displace[s] all state laws that fall within its sphere, even including [] laws that…" state authorities think advance the purposes of the federal enactment); *see also In re Countrywide Financial Corp. Mortg. Marketing and Sales Practices Litigation*, 601 F.Supp.2d 1201, _ (2009) (holding that federal regulations preempted state laws—including the UCL and FAL—"that seek to impose requirements regarding 'disclosure and advertising.'").

Federal preemption may be express or implied. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). And there is—as the District Attorney insists—a presumption against implied preemption. *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). But, Congressional intent to preempt state regulation is manifest where a federal statute plainly conditions state regulation—of a specific sort of conduct—on a requirement to obtain federal approval. *Gade*, 505 U.S. at 99.

That is precisely what the OSH Act requires. Since the OSH Act expressly conditions the exercise of California's police powers on a requirement to obtain prior approval from the Secretary of Labor, California is no longer free to set workplace safety standards where a federal standard is already in effect, or to penalize conduct that is alleged to violate such standards—absent express federal approval. *Id.*, at 96-97. Congress thought that this approach was in the best interest of the nation. 29 U.S.C. §§ 651, 667(b) (requiring a "plan for the development of [workplace safety] standards and their enforcement."). And it was Congress' prerogative to balance national interests by requiring that any proposed state enforcement must be expressly authorized by the Secretary—and by providing that the Secretary "must be satisfied" that a proposed state workplace safety plan meets certain criteria. *Gade*, 505 U.S. at 100. "State standards that affect interstate commerce will be approved only if they are 'required by local conditions' and 'do not unduly burden interstate commerce.'" *Id.* Accordingly, if California wishes to impose heightened standards or penalties in place of established federal standards, the State must submit a plan—or amendments thereto—and obtain express federal approval. *California Lab. Federation v. Occupational Safety & Health Stds. Bd.*, 221 Cal.App.3d, 1547, 1551, 1559 (1990) (recognizing that changes to an approved plan must be approved by the Secretary); *Industrial Truck Ass'n. v. Henry*, 125 F.3d 1305, 1310 (9th Cir. 1997).

II. THE FEDERAL ADMINISTRATIVE PROCEDURES ACT GUARANTEES THE REGULATED COMMUNITY THE OPPORTUNITY TO COMMENT ON NEW RULES AND ENFORCEMENT STANDARDS

A. The Requirement of Express Department of Labor Approval Ensures the Regulated Community an Opportunity to Voice Concerns Over Unduly Burdensome Enforcement Standards

Congress intended a balanced and sensible approach to workplace health and safety issues. *Gade*, 505 U.S. at 102 (explaining Congress sought to "avoid[] duplicative, and possibly counterproductive, regulation."). That national policy is evident in the very structure of the Act and is made demonstrably clear in the express provision allowing the Secretary discretion to disapprove of a plan that would impose "unduly burden[some]" regulatory requirements or penalties. *Id.* at 99-100 ("The design of the statute persuades us that Congress intended to subject employers and employees to only one set of regulations, be it federal or state, and that the only way a State may regulate an OSHA-regulated occupational safety and health issue is pursuant to an approved state plan…"). What is more, the federal framework affords the regulated community an opportunity to help inform the Secretary's judgment on these matters. Administrative Procedures Act, 5 U.S.C. § 553 (2015) ("APA").

Congress knew that, in requiring the Secretary to make a decision as to whether or not to certify a proposed state plan, the Secretary would have

to allow the public an opportunity to offer comments. This is because the APA requires that—before any federal regulation may be enforced—all potentially interested parties must be afforded an opportunity to raise their concerns. *See Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) ("In enacting the APA, Congress made a judgment that agency decisions be made only after affording interested persons notice and an opportunity to comment."). Thus, in requiring the Secretary to give a stamp of approval on any proposed state plan to regulate workplace health and safety, the OSH Act both federalizes what would otherwise be a state issue, as well as guarantees the regulated community the right to invoke the APA's procedural protections.[2] *See Hall v. U.S. E.P.A.*, 273 F.3d 1146 (2001) (affirming that "with respect to [an agency's] actions approving [] revisions [to a state implementation plan], the APA requires that an agency engaging in informal rulemaking provide public notice..." and an opportunity to comment.).

[2] The APA requires legislative rules to go through its notice-and-comment process. And the Ninth Circuit explains that a "legislative rule" is any rule that "creates rights, impose[s] obligations, or effect[s] a change in existing law pursuant to authority delegated by Congress." *Hemp Indus. Ass'n v. DEA*, 333 F.3d 1082, 1087 (9th Cir.2003) (quoting *Miller v. California Speedway Corp.*, 536 F.3d 1020, 1033 (9th Cir. 2008)). Thus since the Secretary's approval of a state workplace safety plan effects a change in safety code standards or enforcement, the Secretary may only grant such approval after allowing a meaningful opportunity for public comment.

Further, the opportunity for notice-and-comment on proposed rules is important because it may ultimately result in more rational and workable enforcement standards. Input from the regulated community is vital to the advancement of Congress' goal of formulating a sensible and balanced approach to workplace health and safety issues. *See e.g.*, Occupational Safety and Health Admin., Supplement to California State Plan; Approval, 62 Fed. Reg. 31,159, 31,178 (June 6, 1997) (responding to comments from concerned businesses by limiting available enforcement mechanisms).

B. The District Attorney's Approach Would Deny the Regulated Community the Opportunity to Comment on His Desire to Impose Additional Civil Penalties for Workplace Safety Violations

Had the State of California proposed amendments to its state workplace safety plan, the Secretary of Labor would have had the opportunity to consider comments and concerns from NFIB and other concerned groups. And without doubt, NFIB would have opposed the amendments that the District Attorney now seeks to ratify by judicial fiat.[3] Indeed, had the State sought authorization to allow district attorneys to impose additional penalties, under California's UCL and FAL, NFIB would

[3] NFIB frequently files comments opposing proposed health and safety regulations that will unduly burden small businesses. *See e.g.*, Docket No. OSHA–2010–0034 (concerning standards to control exposure to respirable crystalline silica); Docket No. OSHA–2013–0023 (concerning a proposed system for tracking workplace injuries).

have filed comments opposing the proposal on the ground that it unduly burdens small businesses.

Specifically, NFIB would likely have objected to the proposal to ratchet up penalties under the UCL and FAL on the ground that such an approach radically increases business liabilities—far in excess of what is permitted under current enforcement standards. This case demonstrates that point well, as the District Attorney "seeks to recover penalties of up to $2,500 per day, per employee, for the period from November 29, 2007 to March 19, 2009." *Solus Industrial Innovations, LLC v. Superior Court*, 229 Cal.App.4th 1291 (2014). Under such a formula, district attorneys could generate shock-and-awe penalties of many millions of dollars under the UCL and FAL for alleged workplace violations—far in excess of what Cal/OSHA may impose under California's authorized enforcement program.

Further, NFIB's comments would have emphasized that it is inequitable to penalize a business twice for *the same underlying conduct*, especially where a doubling of penalties would ruin many small businesses.[4] Additionally, NFIB would have opposed any proposal to

---

[4] One must not forget that in cases where an accident or death results from workplace safety violations, the defendant-company is also facing potentially catastrophic civil liabilities for negligence and or wrongful death. So the financial incentives encouraging compliance with health and safety standards are already very strong. One must therefore question

authorize district attorneys to seek additional penalties under the UCL and FAL: those statutes create a perverse incentive for local prosecutors to impose more severe penalties than necessary, as the proceeds are payable to the local county treasury. *See* Cal. Bus. & Prof. Code § 17206(f). Finally, NFIB would have objected to any amendment to California's state workplace safety plan that would allow for multifarious legal proceedings against a business for the very same underlying conduct, because such a regime would dramatically increase legal expenses for small businesses.

Of course, the District Attorney's approach would effectively deny the regulated community any opportunity to raise such comments on the view that the UCL and FAL are "generally applicable" statutes, and therefore somehow beyond the scope federal preemption. But this is mere subterfuge. While generally applicable regulations may be enforceable in most cases, as applied to health and safety issues in the workplace, they are subject to OSH Act preemption.

It matters not whether the UCL and the FAL are general in their ordinary application. *Gade*, 505 U.S. 106-08 ("Our precedents leave no

---

whether the threat of further penalties will do much—if anything—to encourage compliance. At some point added penalties serve no constructive purpose, but amount only to a scourging—incongruous to any commensurate fault. *See* Steve P. Calandrillo, *Responsible Regulation: A Sensible Cost-Benefit, Risk Versus Risk Approach to Federal Health and Safety Regulation*, 81 B.U.. L. Rev. 957, 978 (2001) ("Increasing costs without improving safety benefits is indisputably inefficient.").

doubt that a dual impact state regulation cannot avoid OSH Act pre-emption simply because the regulations serves several objectives rather than one."). What matters is that the District Attorney has invoked those statutes in this case for the purpose of imposing heightened penalties for a violation of established health and safety standards. *See Gade*, 505 U.S. at 103-04 ("If a State wishes to regulate an issue of worker safety for which a federal standard is in effect, its *only option* is to obtain the prior approval of the Secretary of Labor…") (emphasis added). NFIB and other interested parties should have a chance to raise objections in comments to the Secretary of Labor before any additional penalties should be imposed for conduct violating established federal workplace safety standards because the OSH Act preempted state regulation of that entire field of conduct. *Id.* By those same terms, the Secretary should have an opportunity to weigh those comments in determining whether additional penalties would impose undue burdens on the business community. 29 U.S.C. §§ 651, 667(c).

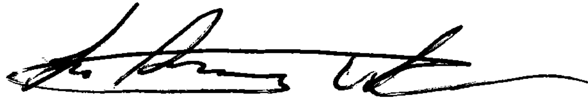
CONCLUSION

For the foregoing reasons, *Amicus* NFIB Legal Center respectfully urges this Court to affirm the decision of the Court of Appeal.

DATED: May 27, 2015.

Respectfully submitted,

DAMIEN M. SCHIFF
LUKE A. WAKE



LUKE A. WAKE

Counsels for Amicus Curiae National Federation of Independent Small Business Legal Center

PROOF OF SERVICE

I, Annie Yu, declare:

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 1115 11th Street, Sacramento, CA 95814.

On May 27, 2015, I served the document(s) described as APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER IN SUPPORT OF DEFENDANT AND PETITIONER on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed to the parties as listed on the attached service list in the following manner:

SEE ATTACHED SERVICE LIST

☒ BY US MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 1115 11th Street, Sacramento, CA 95814 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 1115 11th Street, Sacramento, CA 95814.

☐ UPS NEXT DAY AIR: I deposited such envelope in a facility regularly maintained by UPS with delivery fees fully provided for or delivered the envelope to a courier or driver of UPS authorized to receive documents at Alston & Bird LLP, 1115 11th Street, Sacramento, CA 95814 with delivery fees fully provided for.

☐ BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list: ______________________________

☒ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 27, 2015 at Sacramento, California.

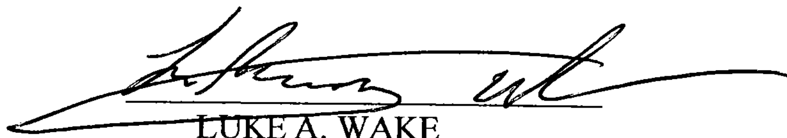
ANNIE YU

CERTIFICATE OF COMPLIANCE

I hereby certify that, in reliance upon the word count feature of the software used to create the document, the foregoing Brief Amicus Curiae contains 2,963 words, including footnotes, and exclusive of those materials not required to be counted under Rule 8.204(c)(3).

Dated: May 27, 2015

Respectfully submitted,



LUKE A. WAKE

Counsels for Amicus Curiae
National Federation of
Independent Small Business
Legal Center

SERVICE LIST

Frederick D. Friedman
Jones Day
555 South Flower Street
50th Floor
Los Angeles, CA 90071-2200

Counsel for Petitioners
Solus Industrial Innovations, LLC et. al

Superior Court of Orange County
Hon. Kim G. Dunning
751 W Santa Ana Blvd. Dept CX 104
Santa Ana, CA 92701

Counsel for Respondent

Santa Ana District Attorney
Office of the District Attorney
401 Civic Center Drive West
Santa Ana, CA 92701

Kelly Ann Roosevelt
Office of the District Attorney
P.O. Box 808
Santa Ana, CA 92701

Counsel for Real Party in interest
The People

Office of the Attorney General
Appellate Coordinator
300 South Spring Street
Los Angeles, CA 90013

Suzanne Patricia Maria
State of California Department of Industrial Relations,
Division of Occupational Safety & Health
1515 Clay Street, Suite 1901
Oakland, CA 94612-1413

Counsel for Amicus Curiae