

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,

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,

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

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, Acting Secretary of Labor, and DOUGLAS L. PARKER, Acting Assistant Secretary of Labor for Occupational Safety and Health,

Defendants.

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(ECF 23), P a i f f r e p e d f o r a r d g e i .



T e O c c u p a t i o n a l S a f e t y a n d H e a l t h A d m i n i s t r a t i o n ' (O S H A) e
W a r a n t R e a d e r e a i n d e r o f i r d p a r t e i a c c e p t e r
o r i e d r g O S H A p e d . F o r e p e r W a c a d a r o d i e c o i r ,
i e a i a i e a O S H A p e d o r o c o i e d o r , e p e r i a o
i r d p a r t e c d g p a i f f ' a i o r e , e v r o e i a a d v i , a d e v e
c o p e i o r i o a d e r i r o g i e o r p a c e o o g f o r p e i a e . A d a i
o - o o r i e , e p e r i i r o i e r d o o r o p e i o o r g a e r , i o o ,
i o i a e e d o b a a o r i o f e p e e .

C o g r e d d e r i a o f i . T e O c c u p a t i o n a l S a f e t y a n d H e a l t h
(O S H) A d c r e a t e a i e d a a r o d r g i f o r , a r e p r e e i a i v e o f i e e p e r
a d a r e p r e e i a i v e a i o r e d b e p e e . 29 U.S.C. § 657(e). T a i p r o v o
r e e o i e e i g f e d e r a i a i o r c e e f o r e p e e i o a i o r e a
r e p r e e i a i v e i r e p e d i o e a i a d a f e t a f f e r : i e N a t i o n a l L a b o r
R e a t i o n A c t (N L R A) . T e r e , C o g r e p r o v d e d o e e d e d b a , a o r i o f
e p e e i e , e c i v e r o e o f r e p r e e i g e p e e , i d . § 159(a) o e r
o r d , a , e p e e r e p r e e i a i v e i b e , a i o r e d p r a i i o i a i i a i e ,
i d . § 657(e) . A o g o o r g a e r a i o - o e d o r p a c e , o r o e r i r d
p a r t e a i o e d o r o - o e d o r p a c e , i o e r v e a e e d e p e e
r e p r e e i a i v e o d c o f o i i e e c v e r e p r e e i a i o c e e o f i e N L R A .

Ad for - ed or place i e , [] ere i ere a i or ed
e p ee re re e i a ve, *id.* i e R e f r e r c o f d i i e OSH Act, c
doe e e p e r i e OSHA p e r i o i a i e a a i e r a i ve re re e i a i
p r o c e . I i e a d , C o g r e p e c f c a p r o v d e d i a i OSHA p e r i o e
o r p a c e , a c o i i a r e a o a b e b e r o f e p e e . *Id.* M o r e o v e r ,
C o g r e o a o e d , a g e e p e e , r e r e e i a v e i o o a p e r o
a i e d b e r o f i r d - p a r r e r e e i a v e s

I f e e d, f e Wa ar o d R e OSHA' a f f e p f f o de ver o Pre de f
B de ' ca p a g p edge f o be f e o f p r o - o p re de f f o r . B f
p r o r f g a f o r f e o o ver ad ere ce f o f e age c ' a f o r f , OSHA
e ceeded f a f o r f , e p o ed f e U.S. Trea r f o f a g ab f , a d ad ed
arb f rar a d ca p r c o . T e C o r f o d o a de f e Wa ar o d R e, e o
OSHA fr o e forc g f , a d dec are f a f f e R e effe f a g .

BAC  D

A.  A  - A

T e OSH A o a f o r e OSHA f o e af o a d ea f f a dard for
o r p ace . 29 U.S.C. § 655. T e f a f f e a o p er f OSHA f o c o d o p ca
p e f o o f o r p ace f o e force f f a dard . *Id.* § 657(a). D r g f e e
a ar o d p e f o c OSHA' ear 2,000 p e f o r p erfor fre e f
a d f p ca f o f adva ce o ce a e p o er re p re e f a f ve a d a e p o ee
re p re e f a f ve a acc o p a f e OSHA p e f o r. *Id.* § 657(e).

C o gre p r o v ded for d ffere f e p o ee a ar o dr g f de p e d g o f e
f p e o f o r p ace. I a o ed o r p ace f , a re p re e f a f ve a f o r ed b f e
e p o er'] e p o ee , C o gre p er f f ed a o re p re e f a f ve f o , acc o p a
f e OSHA p e f o r. *Id.* B f a o - o o r p ace, [] ere f ere o a f o r ed
e p o ee re p re e f a f ve, C o gre p e c f ed f a f OSHA' p e f o r , a c o f
f a rea o ab e ber o f e p o ee . *Id.*

I add f o f o e f ab g f ed a ar o dr g f , C o gre addre ed o
OSHA c o d o f a add f o a e p er f ed r g p e f o e e ce ar . C o gre

Recfa a or ed OSHA pa for, e per a dco fa a de gage i
er age ce (federa or fae) carr o i i a dae. *Id.* § 656(c). A di adde
er cof de fa b e for af

De p i e i e e g f c a i c a g e , O S H A d d a c e d g e i e R e ' d r a a i c d e p a r t r e f r o i e c r r e i r e g a i o , c a i g i e e R e a a e r e , c a r f c a i o o f O S H A ' o g i a d g p r a d c e . 8 9 F e d . R e g . a t 2 2 , 5 9 4 . N o r d d O S H A r e c o c e i e c o f d b e e i e W a a r o d R e a d i o g i a d g i e r e f a i o o f i e a e p r a e , a i o r e d e p o e e r e r e e i a i v e 2 9 C . F . R . § 1 9 0 4 . 3 5 (b) (2) () . O S H A a o e v e r c o d e r e d r e g o i e p a r a i e a i o r i d e r § 6 5 7 (c) i o r e , e p e r a d c o i a i o r e g a g e o e r a g e c e i o p p e e i i e p e r e i e a d o f e p a d g e p o e e a a r o d r g i . A d b a e d o i c o c o , i a i r e o c r e a e e p o e r ' c o i o r c o p a c e b r d e , e c e p i p e r a p a o e i e \$ 5 f a a r a i o c o i i o r e a d i e r e g a i o , 8 9 F e d . R e g . a t 2 2 , 5 5 9 , 2 2 , 5 9 4 , O S H A r e f e d i o c o d e r i e p a d o f i e W a a r o d R e o a b e e , i d . a t 2 2 , 5 9 3 .

O M a 2 0 , a c o a i o o f b e a o c a i o f e d i i b e c a e i e R e p o e g f c a i b r d e o i e r e b e r , a e p a e d i e d e c a r a i o f e d i i M o o . S e e A p p e d , a i a c e d .

~~A~~ ~~ADA~~ ~~D~~

S a r d g e i a r r a i e d e , i e r e o g e e d p i e a i o a a i e r a f a d . F e d . R . C v . P . 5 6 (a) . U d e r i e A P A , a c o r i i , e a d e a g e c a d o i a i , a r b i r a r , c a p r c o , o r , e c e o f i a i i o r r d o o , a i o r i , o r i a i o . 5 U . S . C . § 7 0 6 (2) . A a g e c d e c o , a r b i r a r a d c a p r c o f i e a g e c a i i e i r e f a e d i o c o d e r a p o i a i a p e d o f i e p r o b e , o f f e r e d a e p a a i o f o r i d e c o i a i r c o i e r i o i e e v d e c e b e f o r e i e

age c, or • p a b e i a i i c o d • b e a c r b e d i • a d f f e r e c e v e • r i e
p r o d o f a g e c e p e n e, o r e g e d

representative of *employees*, *id.* (emphasis added), but vice versa. The Supreme Court, in *Beck*, held that the OSHA procedure, which is a representative of employees' right to representation, is not a "contract" for purposes of the First Amendment. The Court, in *Beck*, held that the OSHA procedure is not a "contract" for purposes of the First Amendment. The Court, in *Beck*, held that the OSHA procedure is not a "contract" for purposes of the First Amendment.

1. To that end, the Supreme Court in *Beck*, 484 U.S. 282 (1987), held that the OSHA procedure is not a "contract" for purposes of the First Amendment. The Court, in *Beck*, held that the OSHA procedure is not a "contract" for purposes of the First Amendment. The Court, in *Beck*, held that the OSHA procedure is not a "contract" for purposes of the First Amendment.

The Supreme Court in *Beck*, 484 U.S. 282 (1987), held that the OSHA procedure is not a "contract" for purposes of the First Amendment. The Court, in *Beck*, held that the OSHA procedure is not a "contract" for purposes of the First Amendment. The Court, in *Beck*, held that the OSHA procedure is not a "contract" for purposes of the First Amendment.

Here, the Supreme Court in *Beck*, 484 U.S. 282 (1987), held that the OSHA procedure is not a "contract" for purposes of the First Amendment. The Court, in *Beck*, held that the OSHA procedure is not a "contract" for purposes of the First Amendment.

If further confirmed by the Congress, it did *not* refer to
a federal, for example, the referring of the *employer's* representative
§ 657(e). *Russello v. United States*

3. C o e re a e d i a f i o r p r o v o f n e r p p o n i i f e r p r e a f o f § 657(e). *First*, C o g r e a f o r e d O S H A i o , e p o a d p a f o r , e p e n t a d c o i a f o r o r g a a f o i e r e o f i o a d i e p e o r d r e d , 29 U.S.C. § 656(c)(2), a d i o e i e e r v c e a d p e r o e o f o e r a g e c e b o f f e d e r a a d i a e c a r r g o i p e o , *id.* § 656(c)(1). T a f i e a C o g r e c o i e p a e d i e a g e c o d f a g a p i e p e n t e d r g p e o o i r o g a i r d p a n t r e p r e e i a v e .

Second, C o g r e d d o a f o r e i r d p a n t e i o a c c e c o f d e i a b e f o r a f o d r g O S H A p e o . , A f o r a f o o b i a e d d r g a O S H A p e o c o f d e i a i a a r r o e c e p i o f o r d c o r e , i o o e r o f f c e r o r e p o e e c o c e r e d i c a r r g o i i c a p i e r . 29 U.S.C. § 664. I f C o g r e a d i e d e d i o a o i r d p a n t e i o a c c o p a O S H A p e o , i r e o d a v e a d d r e e d i e r e p o r e i o c o f d e i a b e f o r a f o .

Third, i e N L R A c o p e i f e r p r e a f o i o a v o d a c o f o i i e O S H A d . *United States v. Moss*, 872 F.3d 304, 310 (5th C r. 2017) (i a f i e *in pari materia* , i b e c o i r e d i o g e r) . T e R e i o p e i e N L R A ' , e c v e e c a f o r d e g a f g e p o e e r e p r e e i a v e b p e r i i g O S H A i o a f o r e r e p r e e i a v e o a e e i a i a d a r d e b a . 29 U.S.C. § 159(a). A d i f n e r c o f o i § 159(a) b a o g o e o r i o e p o e e i o d o a f i e N L R A r e r e a , a o r i o f e p o e e i o d o . *Id.* T e o a i o a v o d i c o f o i i e N L R A i o i e r p r e § 657(e) a o p e r i i g i r d p a n t e i o r e p r e e i o o e p o e e d r g O S H A p e o .

4. Finally, OSHA's obligation to conform its interpretation of § 657(e). See *FTC v. Bunte Bros., Inc.*, 312 U.S. 349, 352 (1941) (established practice and good faith of employer covered by general fact for a wage). In a 2001 regulation pursuant to § 657, OSHA defined a worker's representative as one who bargains for the employee's interests under NLRA. 29 C.F.R. § 1904.35(b)(2)(i); 66 Fed. Reg. 5916, 6132 (Jan. 19, 2001). That regulation also defines a worker's representative as one who bargains for the employee's interests, or a representative, as a representative of the employee's interests.

First, OSHA's interpretation of § 657(e) creates a retroced conflict with the NLRA's policy of ordered process. In a process here, the authority of the employee have degraded a, the respective value[] of a fee employee, 29 U.S.C. § 159(e), the a, the respective benefit afforded by OSHA's policy, *Asarco, Inc.*, 86 F.3d at 1412. Indeed, the a become a fee of a fee employee,

(or •) i e •' e d r g a OSHA p e d •. *Id.* at 22,583 (a • g f o r a , add i • a e p • ee r e p r e e i a f v e (regard e of e r c r e p r e e i a f v e aff a i e d i a •)). I f e a d o f a • g i e NLRB i • cer t i f c e p • ee r e p r e e i a f v e ave bee a i o r e d, OSHA a a g e d i a f r o e i • OSHA p e d o r • a ca e-b -ca e ba . *Id.* at 22,559.

Third, i e e R e p i • e d e p • er i • a H o b •' c • ce: c o p i i e R e a d face p e i a f a r a b o r p r a d c e c a r g e d e r i e NLR A f o r r e c o g g i e OSHA-de g a i e d (a o p p o e d i • NLRA-a i o r e d) r e p r e e i a f v e, o r r e e d i e OSHA-de g a i e d r e p r e e i a f v e a d face c o p o r p r o c e a d p e i a c o i e p i f o r d e g a c c e . I f a b e a f a r a b o r p r a d c e f o r a e p • er i • e g a g e i a r e p r e e i a f v e • ac a o r i p p o i a • g e p • ee . *See NLRB v. Loc. Union No. 103, Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers, AFL-CIO*, 434 U.S. 335, 344 (1978); *Teamsters Nat. United Parcel Serv. Negotiating Comm. v. NLRB*, 17 F.3d 1518, 1523 (D.C. C r. 1994). A d e p • er face i r o f NLRA ab i f i e c o p i i e R e a d a • • - • r e p r e e i a f v e acce i • • e d o r p a c e . I r e p • e, OSHA a i a f e i • ab o i i e c o p e o f i e NLRA are, be o d i e c o p e o f i r e a g a d OSHA' a i o r i . 89 Fed. Reg. at 22,583. T a f' e a d i e p • i: b i r d g i o a a r e a e r e i , a • c o p a r a f v e e p e r i e, OSHA a i r a e d o i d e i i a f i o r a i o r i . *West Virginia v. EPA*, 597 U.S. 697, 729 (2022).

F o r i e e add i • a r e a • , i e R e e c e e d OSHA' a i o r i b a • g • - • r e p r e e i a f v e i • acce • e d o r p a c e d r g OSHA p e d • .

C. C. D. A. A.

Regarding the effect of the R. e. f. e. r. e. n. c. e. OSHA's ...
 a. i. b. a. g. a. f. e. d. b. e. r. o. f. e. p. e. e. r. e. f. e. r. e. n. c. e. a. c. c. e.
 e. p. e. r. 'p. r. o. p. e. r. t. 89 Fed. Reg. at 22,569. C. o. n. g. r. e. s. s. i. o. n. e. p. e. r. a. d.
 e. p. e. e. i. a. g. e. r. e. f. e. r. e. n. c. e. a. f. e. d. b. e. r.

T. e. i. f. o. f. § 657(e) a. c. c. e. a. r. t. i. c. l. e. C. o. n. g. r. e. s. s. i. o. n. e. d. a. r. o. d. r. g. i. t. o. , a.
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 Language* 1 (N. e. C. o. l. l. e. g. e. e. d. 1976); s. e. e. T. e. R. a. d. o. H. o. e. C. o. l. l. e. g. e. D. i. c. t. i. o. n. a. r. y (Rev.
 e. d. 1980) (d. e. f. i. n. i. t. i. o. n. , a. a. , a. e. o. f. e. c. a. o. r. g. r. o. p.); B. r. a. A. G. a. r. n. e. r. , *Garner's
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 o. f. e. c. a. g. f. i. e. p. r. a. d. e. d. g. o. i. , c. o. i. e. i. , A. , *Black's Law
 Dictionary, supra* , o. f. c. o. i. e. i. , i. e. g. a. r. a. n. i. c. e. 'a' r. e. f. e. r. i. o. o. e. i. e. .
Banuelos v. Barr, 953 F.3d 1176, 1181 (10th C. r. 2020).

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§ 656(b). Nevertheless, the Tax Court has held that each of the references to "the Act" in the Code, and the references to "the Act" in the Code, are to be construed as referring to the Code as amended, and not to the Code as originally enacted. 29 U.S.C. §§ 725, 796d, 3102. But see § 657(e), Code of Federal Regulations, which refers to the Code as amended by the Act. This difference in language is to be given effect. See *Russello*, 464 U.S. at 23.

Finally, the Code does not contain any provision that would require the Code to be construed as amended by the Act. In the *Meyer* Act, Congress amended the Code by adding, to the Code, the Code of Federal Regulations, which refers to the Code as amended by the Act.

A. 

The Takings Clause provides, “[N]or a private property be taken for public use, without just compensation.” U.S. Const., amend. V. Affirming that the government’s exercise of eminent domain is a taking of private property for public use, the Court in *Cedar Point*, 594 U.S. at 149. As the Supreme Court has repeatedly held, “the government’s exercise of eminent domain is a taking of private property for public use.” *Id.* at 150 (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176, 179–80 (1979)); *Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 765 (2021) (describing the government’s exercise of eminent domain as a taking of private property for public use).

The Court applied this rule in *Cedar Point*, holding that the government’s exercise of eminent domain is a taking of private property for public use. 594 U.S. at 152 (quoting the government’s argument that the government’s exercise of eminent domain is a taking of private property for public use). Similarly, the Court has held, *per se*, that the government’s exercise of eminent domain is a taking of private property for public use. *Id.*

The Court recognized that the government’s exercise of eminent domain is a taking of private property for public use. *First*, the government’s exercise of eminent domain is a taking of private property for public use. *Id.* at 161. The government’s exercise of eminent domain is a taking of private property for public use. *Id.* at 160.

Second, the Court affirmed that the government’s exercise of eminent domain is a taking of private property for public use. 1rP83.275 0 TD8.0001 Tc

But *Cedar Point* held unequivocally for government acceptance of a
 categorical ban on the use of a particular type of amusement ride for
 safety reasons. The Supreme Court has consistently held that the
 government's interest in public safety is a compelling state interest.
 Parker v. Levy, 431 U.S. 309, 319 (1977). The Court has also held
 that the government's interest in national security is a compelling state
 interest. *United States v. Alvarez-Machain*, 501 U.S. 552, 562 (1991).
 In *Deed, v. Superior Court*, 471 P.2d 1000 (Cal. 1970), the Court
 held that the government's interest in national security is a compelling
 state interest. *Wilson*, 526 U.S. at 611-12.¹ And the categorical
 ban on the use of a particular type of amusement ride for safety
 reasons is a categorical ban on the use of a particular type of
 amusement ride for safety reasons. *Cedar Point* held unequivocally
 for government acceptance of a categorical ban on the use of a
 particular type of amusement ride for safety reasons.

Nor can OSHA's categorical ban on the use of a particular type of
 amusement ride for safety reasons be justified. *Cedar Point*, 594
 U.S. at 162. To that end, the categorical ban on the use of a
 particular type of amusement ride for safety reasons is a categorical
 ban on the use of a particular type of amusement ride for safety
 reasons.

the employer's property rights, the employer's ability to hire and fire, and the employer's right to control the workplace. *NLRB v. Town & Country Elec., Inc.*, 516 U.S. 85, 97 (1995) (citing *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 538 (1992)); *see also Cedar Point*, 594 U.S. at 162 (Kavanaugh, J., concurring) (citing *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956)).

As a result, the Board's decision in *Lechmere* is a departure from the long-standing principle that an employer's property rights are not absolute. In *Lechmere*, the Board held that an employer's property rights in a parking lot were not sufficient to justify a ban on union activity. *Ala. Ass'n of Realtors*, 594 U.S. at 764. The Board's decision in *Lechmere* is a departure from the long-standing principle that an employer's property rights are not absolute. *See supra* Part I.

The Board's decision in *Lechmere* is a departure from the long-standing principle that an employer's property rights are not absolute. *See supra* Part I.

The Board's decision in *Lechmere* is a departure from the long-standing principle that an employer's property rights are not absolute. *See supra* Part I.

there is a difference as to whether the agency should have a fair and equitable hearing. 89 Fed. Reg. at 22,588. The fact that the agency's decision is not supported by substantial evidence does not mean that the agency's decision is arbitrary and capricious.

B. Agency's Decision is Arbitrary and Capricious.

Next, OSHA failed to consider the fact that the agency's decision is arbitrary and capricious. *State Farm*, 463 U.S. at 43, reads that the agency's decision is arbitrary and capricious if the agency's decision is not supported by substantial evidence. 89 Fed. Reg. at 22,592. For example, OSHA refused to grant a hearing to the plaintiff because the plaintiff's complaint was not supported by substantial evidence. *Id.* at 22,577. In addition, OSHA failed to address the plaintiff's complaint because the plaintiff's complaint was not supported by substantial evidence. *Id.* at 22,559. Nor did OSHA adequately grant a hearing to the plaintiff because the plaintiff's complaint was not supported by substantial evidence. *Id.* at 22,584, again the plaintiff's complaint was not supported by substantial evidence. *Id.* at 22,589. OSHA also, decided to deny the plaintiff's request for a hearing because the plaintiff's complaint was not supported by substantial evidence. *Id.* at 22,590-91; see *id.* at 22,574, 22,581. Per the fact that the plaintiff's complaint was not supported by substantial evidence, the plaintiff's complaint was not supported by substantial evidence.

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22,600, ,r co ierfoi e ev de ce beforei e age c , *State Farm*, 463 U.S. at 43. Had OSHA p r p er acco ied fori e R e' coi , OSHA g i ave co c dedi at i b rde oi e g i be efi .

To beg , OSHA g oredi ecoi ofia ge p o er 'p r p er r g i . T e R e a i or e a ied ber ofi rd p ar e i acce e p o er 'p r va e p r p er (e er or oi at acce v o a e i e F fi A e d e i). OSHA ca oi p g orei at coi i o, orei a 8 o e p o er . 89 Fed. Reg. at 22,595 .4.

S ar , de p i e ca g i at , [i] e record re p e e i e a p e ofi rd p ar e acco pa g p ed or , OSHA ade o effo i o a a e i e ad a coi a oc ad ed i i o e e a p e . *Id.* at 22,570. W e er or oi ere , da a o coi , i e age c o da e a i ave eva ad ed i e e i-be i i g: rea - or de a p e .

Ne i, OSHA ro e off i ra g coi b ca g i at e p o er ave , o ob ga i o i ra or br efi rd-p ar re p re e i a i ve ab o i a i g (a p r p r a e p er o a p r ed ve e p e i (PPE), af e p reca i o , p ed o co e, e c.). *Id.* at 22,594. B i OSHA' o g da ce re re br ef g, oi de co i a i o i e p r p e ofi e p ed o a d p er o a p r ed ve e p e i i o be i ed. FOM 3-5. A d i de fe rea o i o gge i i at e p o er o da o i rd p ar e o i o fa ar a d p e i a a ardo or i e i o i a i ra g at o ever. W e i ra g a o be ece ar for a p ed or a read fa ar i o i ra ed o i e p r p er p reca i o , a fa ar o i der o d e re re i ra g.

E r g i at v i or ave a p r p r a e PPE a o er coi OSHA g ored. OSHA reg at o a d g da ce recog e i e p o i a ce of a p r p r a e PPE for

e p e c a i e o e p e r a i g a b e e . 29 U.S.C. § 657(d). B i e r e , O S H A
 p r o v d e d o b a f o r i c a i a i e r e g a i o d o e o i r g g e r i e p r o c e d r a
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 F a r e A c t o f 1996). S e e 89 Fed. Reg. a t 22,597. T a t e r r o r d e p e d e i v o a i e
 i e R F A. E.g., *NFIB v. Perez*, No. 5:16-CV-0066-C, 2016 WL 3766121, a t *37-39 (N.D.
 T e . J e 27, 2016).

* * *

A f o r r e e f , v a c a i r o f a g e c a d o i e d e f a i r e i C r c i .
Cargill v. Garland, 57 F.4 t 447, 472 (5 t C r. 2023), *aff'd*, No. 22-976, 2024 WL
 2981505 (U.S. J e 14, 2024). A d d i o a , i e C o r t o d d e c a r e i a t § 657(e)
 d o e o a i o r e i r d p a r a c c e i o o - o o r p a c e , p e r i o - o
 i r d p a r a c c e i o o e d o r p a c e , o r a o a i e d b e r o f e p o e e
 r e p r e e i a v e d r g a a a r o d p e t o . A f o r i e i a g , i e C o r t o d
 d e c a r e i a i i e G o v e r e i b e o b g a t e d i o p a i c o p e a t o f i f o r c e
 e p o e r i o a d i i r d p a r a e o i o i e r p r o p e r i e . *Duke Power Co. v. Carolina
 Env't Study Grp.*, 438 U.S. 59, 71 .15 (1978); *E. Enters. v. Apfel*, 524 U.S. 498, 521-
 22 (1998). A d i o a f f o r d , c o p e r e r e e f , i e C o r t o d , e o O S H A f r o
 , e f o r c g i e a g e c ' , r e a d g o f § 657(e) o a a d o c b a . *Sanofi Aventis U.S.
 LLC v. HHS*, 58 F.4 t 696, 706 (3d C r. 2023).

C C

Dated: June 28, 2024

Respectfully,
Brett A. Shumate

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I hereby certify that on June 28, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of filing will be emailed to all parties of record by operation of the Court's electronic filing system.

/s/ Brett A. Shumate
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