

ORAL ARGUMENT NOT YET SCHEDULED

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

BRICK INDUSTRY ASSOCIATION,)

Petitioner,)

v.)

SECRETARY, DEPARTMENT OF)
LABOR, AND OCCUPATIONAL)
SAFETY AND HEALTH)
ADMINISTRATION,)

Respondents.)

No. 16-1146

MOTION FOR LEAVE TO INTERVENE IN SUPPORT OF PETITIONER

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and D.C. Circuit Rules 15(b) and 27, the Chamber of Commerce of the United States of America (“the U.S. Chamber”), the State Chamber of Oklahoma (“Oklahoma Chamber”), and the Greater North Dakota Chamber of Commerce (“North Dakota Chamber”) (collectively, “the Chambers”) respectfully move to intervene in support of Petitioner the Brick Industry Association (“BIA”) in the above-captioned case. The Chambers have contacted counsel for all parties. Petitioner

does not oppose this motion. Respondents take no position at this time but reserve the right to respond at a later date.

In support of this motion, the Chambers state:

1. On May 13, 2016, BIA filed a petition for review of the final rule promulgated by the U.S. Occupational Safety and Health Administration (“OSHA”) under the Occupational Safety and Health Act, published at 81 Fed. Reg. 16,286 (Mar. 25, 2016) and titled “Occupational Exposure to Respirable Crystalline Silica” (“Final Rule”).

2. The Final Rule amends OSHA’s existing regulations regarding employee exposure to respirable crystalline silica in construction, general industry, and maritime operations.

3. Federal Rule of Appellate Procedure 15(d) provides that a motion for leave to intervene “must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.” This Rule “simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought.” *Synovus Fin. Corp. v. Bd. of Governors*, 952 F.2d 426, 433 (D.C. Cir. 1991).

4. The Chambers’ motion is timely because it was filed within 30 days after BIA filed its petition for review. Moreover, this motion is being filed at an

early stage of the proceedings and before a briefing schedule has been set. Thus, granting this motion will not disrupt or delay any proceedings.

5. The Chambers seek leave to intervene in this case because their members have a direct and substantial interest in this proceeding that would otherwise go unrepresented by any other party. *See Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (intervention should be granted if the “representation of [the movant’s] interest ‘may be’ inadequate”) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

6. The U.S. Chamber is a non-profit, tax-exempt organization incorporated in the District of Columbia. The U.S. Chamber is the world’s largest business federation. The U.S. Chamber represents 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry, from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

7. The Oklahoma Chamber is a non-profit, tax-exempt organization incorporated in the State of Oklahoma. The Oklahoma Chamber represents more than 1,500 Oklahoma businesses and 350,000 employees. It has been the State’s leading advocate for business since 1926.

8. The North Dakota Chamber is a non-profit, tax-exempt organization incorporated in the State of North Dakota. Founded in 1924, the North Dakota Chamber works to make North Dakota's business climate the best in the nation.

9. The Final Rule imposes burdensome new requirements on businesses regarding employee exposure to respirable crystalline silica. As a result, the Final Rule will impose more than a billion dollars in new compliance costs every year on businesses that collectively employ more than two million people in the United States. As already noted in the rulemaking record, many of the Chambers' members' interests will be directly impaired if the Final Rule is not set aside.

10. Importantly, BIA cannot adequately represent the distinct interests of the Chambers' members. BIA is the trade association representing distributors and manufacturers of clay brick and suppliers of related products and services. The Chambers' interests, by contrast, are far broader. Collectively, the Chambers represent millions of companies across every industry in this country. The Final Rule will affect members of the Chambers in dozens of industries, including those involving cement, glass, computers, cell phones, paints and coatings, hand tools, factory molds, brick, tile, roofing, farms, roads, buildings, railroads, oil and gas production, and manufacturing of cars, ships and airplanes.

11. Moreover, the BIA's arguments will be focused on challenging the Final Rule's factual findings and conclusions of law as it relates to the brick

industry. *See, e.g.*, Comments of the Brick Industry Association, Docket No. OSHA-2010-0034, Occupational Exposure to Respirable Silica (Jan. 27, 2014) (arguing that “the brick industry is unique,” that there is “a significant body of data ... that clearly demonstrates that there is little-to-no silicosis in our industry,” and that OSHA erred by failing “to conduct a separate determination of economic feasibility for clay brick manufacturing”). The Chambers’ arguments, by contrast, will be all-encompassing and representative of every affected industry. *See, e.g.*, Comments of the U.S. Chamber of Commerce, Docket No. OSHA-2010-0034, Occupational Exposure to Respirable Silica (Feb. 11, 2014) (arguing, *inter alia*, that “the proposed rule is not technologically feasible” and that “OSHA made improper and false risk/benefit assumptions and estimates”); *see also* Post-Hearing Expert Comments of the U.S. Chamber of Commerce, Docket No. OSHA-2010-0034, Occupational Exposure to Respirable Silica (June 3, 2014); Comments of the U.S. Chamber of Commerce, Docket No. OSHA-2010-0034, Occupational Exposure to Respirable Silica (June 24, 2014); Post-Hearing Comments of the U.S. Chamber of Commerce, Docket No. OSHA-2010-0034, Occupational Exposure to Respirable Silica (Aug. 18, 2014).

12. Given the Chambers’ broad interests and comprehensive arguments against the Final Rule, the Chambers’ participation in this proceeding is vital to ensuring that their members are adequately represented and that the Final Rule

receives thorough judicial review. Neither BIA nor any of the other petitioners challenging the Final Rule can adequately represent the interests of the Chambers' members. Indeed, no other petitioner challenging this rule can speak for such a broad coalition of businesses and industries. Thus, the Chambers' participation is necessary to ensure that every issue affecting the business community is properly presented.

13. Pursuant to D.C. Circuit Rule 15(b), the Chambers request intervenor status in all cases before this Court involving the Final Rule.

For the foregoing reasons, the Chambers' motion to intervene should be granted.

Dated: June 10, 2016

Respectfully submitted,

By: /s/ William S. Consovoy

Steven P. Lehotsky
Sheldon B. Gilbert
U.S. CHAMBER LITIGATION
CENTER
1615 H Street, NW
Washington, DC 20062
Tel: (202) 463-5337
slehotsky@uschamber.com
sgilbert@uschamber.com

*Counsel for Proposed Intervenor
The Chamber of Commerce of
the United States of America*

William S. Consovoy
Thomas R. McCarthy
J. Michael Connolly
CONSOVOY MCCARTHY PARK PLLC
3033 Wilson Boulevard, Suite 700
Arlington, VA 22201
Tel: (703) 243-9423
will@consovoymccarthy.com
tom@consovoymccarthy.com
mike@consovoymccarthy.com

Michael H. Park
CONSOVOY MCCARTHY PARK PLLC
3 Columbus Circle, 15th Floor
New York, NY 10019
Tel: (212) 247-8006
park@consovoymccarthy.com

*Counsel for Proposed Intervenors
The Chamber of Commerce of
the United States of America, the State
Chamber of Oklahoma, and the Greater
North Dakota Chamber of Commerce*

ORAL ARGUMENT NOT YET SCHEDULED

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

BRICK INDUSTRY ASSOCIATION,)

Petitioner,)

v.)

SECRETARY, DEPARTMENT OF)
LABOR, AND OCCUPATIONAL)
SAFETY AND HEALTH)
ADMINISTRATION,)

Respondents.)

No. 16-1146

CERTIFICATE OF PARTIES

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), the Chambers submit the following statement of parties. The Petitioner is the Brick Industry Association. The Respondents are Thomas Perez, Secretary, United States Department of Labor, and Occupational Safety and Health Administration, U.S. Department of Labor. There are no intervenors or *amici curiae* in this case at this time.

Dated: June 10, 2016

Respectfully submitted,

By: /s/ William S. Consovoy

Steven P. Lehotsky
Sheldon B. Gilbert
U.S. CHAMBER LITIGATION
CENTER
1615 H Street, NW
Washington, DC 20062
Tel: (202) 463-5337
slehotsky@uschamber.com
sgilbert@uschamber.com

*Counsel for Proposed Intervenors
The Chamber of Commerce of
the United States of America*

William S. Consovoy
Thomas R. McCarthy
J. Michael Connolly
CONSOVOY MCCARTHY PARK PLLC
3033 Wilson Boulevard, Suite 700
Arlington, VA 22201
Tel: (703) 243-9423
will@consovoymccarthy.com
tom@consovoymccarthy.com
mike@consovoymccarthy.com

Michael H. Park
CONSOVOY MCCARTHY PARK PLLC
3 Columbus Circle, 15th Floor
New York, NY 10019
Tel: (212) 247-8006
park@consovoymccarthy.com

*Counsel for Proposed Intervenors
The Chamber of Commerce of
the United States of America, the State
Chamber of Oklahoma, and the Greater
North Dakota Chamber of Commerce*

ORAL ARGUMENT NOT YET SCHEDULED

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

BRICK INDUSTRY ASSOCIATION,)
))
Petitioner,)
))
v.)
))
SECRETARY, DEPARTMENT OF)
LABOR, AND OCCUPATIONAL)
SAFETY AND HEALTH)
ADMINISTRATION,)
))
Respondents.)
))

No. 16-1146

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Proposed Intervenors state as follows:

The Chamber of Commerce of the United States of America (“the U.S. Chamber”) is a non-profit, tax-exempt organization incorporated in the District of Columbia. The U.S. Chamber is the world’s largest business federation. The U.S. Chamber represents 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry, from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress,

the Executive Branch, and the courts. The U.S. Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the U.S. Chamber.

The Oklahoma Chamber is a non-profit, tax-exempt organization incorporated in the State of Oklahoma. The Oklahoma Chamber represents more than 1,500 Oklahoma businesses and 350,000 employees. It has been the State's leading advocate for business since 1926. The Oklahoma Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Oklahoma Chamber.

The North Dakota Chamber is a non-profit, tax-exempt organization incorporated in the State of North Dakota. Founded in 1924, the North Dakota Chamber works to make North Dakota's business climate the best in the nation. The North Dakota Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the North Dakota Chamber.

Dated: June 10, 2016

Respectfully submitted,

By: /s/ William S. Consovoy

Steven P. Lehotsky
Sheldon B. Gilbert
U.S. CHAMBER LITIGATION
CENTER
1615 H Street, NW
Washington, DC 20062
Tel: (202) 463-5337
slehotsky@uschamber.com
sgilbert@uschamber.com

*Counsel for Proposed Intervenor
The Chamber of Commerce of
the United States of America*

William S. Consovoy
Thomas R. McCarthy
J. Michael Connolly
CONSOVOY MCCARTHY PARK PLLC
3033 Wilson Boulevard, Suite 700
Arlington, VA 22201
Tel: (703) 243-9423
will@consovoymccarthy.com
tom@consovoymccarthy.com
mike@consovoymccarthy.com

Michael H. Park
CONSOVOY MCCARTHY PARK PLLC
3 Columbus Circle, 15th Floor
New York, NY 10019
Tel: (212) 247-8006
park@consovoymccarthy.com

*Counsel for Proposed Intervenors
The Chamber of Commerce of
the United States of America, the State
Chamber of Oklahoma, and the Greater
North Dakota Chamber of Commerce*

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June 2016, I filed the foregoing documents through the Court's CM/ECF system. All parties are represented by registered CM/ECF users and will be served by the CM/ECF system.

/s/ William S. Consovoy

*Counsel for Proposed Intervenors
The Chamber of Commerce of
the United States of America, the State
Chamber of Oklahoma, and the Greater
North Dakota Chamber of Commerce*