CASE NO. 21-20202

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SCOTT EASOM; ADRIAN HOWARD; and JOHN NAU,
Plaintiffs – Appellants

v.

US WELL SERVICES, INCORPORATED,
Defendant – Appellee

On appeal from the
United States District Court
for the Southern District of Texas
No. 4:20-CV-2995

BRIEF OF AMICUS CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT AND CERTIFICATE OF INTERESTED PERSONS

No. 21-20202, *Easom v. US Well Services*

Pursuant to Federal Rule of Appellate Procedure 26.1, amicus curiae the Chamber of Commerce of the United States of America states that it has no parent corporation, is not a publicly held corporation, and that no publicly held corporation has 10% or greater ownership in the amicus.

Pursuant to Circuit Rule 26.1-1, the amicus makes the following additions to the previously filed Certificates of Interested Persons:

- Chamber of Commerce of the United States of America, Amicus Curiae in Support of Appellee;
- Killian, Bryan, Counsel for Amicus Curiae
- Maloney, Stephanie, Counsel for Chamber of Commerce of the United States of America, Amicus Curiae in Support of Appellee;
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INTEREST OF THE AMICUS CURIAE

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the Nation's business community.

This case arises under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq*. ("WARN Act" or the "Act"). The WARN Act generally requires employers to issue 60 days' advance written notice before certain events that constitute a "plant closing" or "mass layoff." The Act also contains a "natural disaster" exception—set forth in Section 3(b)(2)(B)—which states: "*No notice under this [Act] shall be required* if the plant closing or mass layoff *is due to any form of natural disaster,* such as a flood, earthquake, or the drought currently ravaging the farmlands of the United States." 29 U.S.C. § 2102(b)(2)(B) (emphases added).

This case has particular importance to the Chamber and to employers and employees generally. The COVID-19 pandemic affected a broad array of businesses whose interests are represented by the Chamber, including manufacturers, retailers, service providers, hotels, restaurants, and others. Moreover, Section 3(b)(2)(B) of

the WARN Act makes the 60-day notice requirement inapplicable to "*any form* of natural disaster." *Id.* (emphasis added). Accordingly, this case—involving the scope of Section 3(b)(2)(B)—has wide-ranging implications in all kinds of catastrophic events, which, as provided in the Act, are outside the scope of the 60-day notice requirement.[1]

1 Pursuant to Fed. R. App. P. 29(a)(2), counsel for the Chamber conferred with counsel for the Appellants and the Appellee, and all consented to the filing of this amicus brief. No counsel for a party authored this brief in whole or in part, and no person other than the amicus curiae, its members, or counsel contributed money that was intended to fund the preparation or submission of this brief.

STATEMENT OF ISSUES

This amicus brief addresses the causation questions presented on appeal, in particular:

1. Does the "natural disaster" exception to the WARN Act's 60-day notice requirement apply only when a natural disaster is the proximate cause of a plant closing or mass layoff, or does it apply when a natural disaster is the but-for cause?

2. Can a global pandemic be the proximate cause of layoffs ordered in the early weeks of the pandemic?

INTRODUCTION

In March 2020, American businesses were hit by COVID-19, "an abrupt and exogenous shock." GENE FALK ET AL., CONG. RSCH. SERV., R46554, UNEMPLOYMENT RATES DURING THE COVID-19 PANDEMIC 2 (2021), *available at* http://fas.org/sgp/crs/misc/R46554.pdf. No sector of the economy was spared as millions of Americans contracted the disease and hundreds of millions more tried to avoid it. Businesses rapidly responded by scaling back operations or shutting down temporarily. *See id.* at 4.

Though COVID-19's impact has been felt widely and deeply, many businesses are surviving. And they are surviving, in part, because they were permitted (and, in many cases, were commanded) to make the difficult choice to order layoffs and similar measures as soon as the pandemic struck. Thanks to their ability to respond immediately to a cataclysmic natural event—consistent with the WARN Act's "natural disaster" exception—many employers are positioned to emerge intact, which benefits employees, their families, communities, and the overall economy.

Yet, just as they prepare to restore normal operations, many employers are facing an entirely manmade challenge: class-action lawsuits challenging business actions necessitated by the COVID-19 pandemic. As illustrated in this case, some claimants allege that, even when the pandemic caused demand for products and services to evaporate, employers were required to issue 60-day notices and continue employing affected employees for the full 60 days.

The WARN Act's "natural disaster" exception clearly provides otherwise. Section 3(b)(2)(B) of the Act states:

> No notice under this chapter shall be required if the plant closing or mass layoff is due to any form of natural disaster, such as a flood, earthquake, or the drought currently ravaging the farmlands of the United States.

29 U.S.C. § 2102(b)(2)(B).

In the decision below, the district court correctly concluded that the "natural disaster" exception only requires proof of but-for cause. The contrary position of the Appellants and the United States—that the "natural disaster" exception requires proof of proximate cause—is wrong. The Chamber agrees with the district court and the Appellee that the text of the "natural disaster" exception clearly indicates Congress's intent for the exception to apply whenever a natural disaster is the but-for cause of a layoff. In this brief, the Chamber explains how the structure of the WARN Act reinforces that interpretation. The Chamber also explains why the COVID-19 pandemic can be the cause of layoffs under *any* standard of causation.

SUMMARY OF ARGUMENT

The structure of the WARN Act confirms that the "natural disaster" exception applies whenever a natural disaster is the but-for cause of a plant closing or mass layoff. Congress enumerated three exceptions to the 60-day notice requirement. One of them, the "unforeseeable business circumstances" exception, affirmatively permits employers to implement plant closings or mass layoffs with less than 60 days' notice when they are "caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required." 29 U.S.C. § 2102(b)(2)(A). The "unforeseeable business circumstances" exception is often fact-intensive to resolve, so employers that rely on this exception frequently must go through discovery, sometimes trial, before a court can resolve whether it applies.

Natural disasters are different. By their nature (in fact, *because of* nature), natural disasters affect entire communities—employers and employees alike—without much warning. When natural disasters strike, everyone knows it. Recognizing the uniqueness of natural disasters, Congress carved them out and created a standalone "natural disaster" exception that is easier to resolve than the "unforeseeable business circumstances" exception. Instead of burdening employers and courts with unnecessary WARN Act litigation, the easy-to-administer "natural disaster" exception facilitates rebuilding communities after disasters subside.

The Appellants and the United States resist this conclusion and urge the Court to hold that the "natural disaster" exception requires proof of proximate or direct cause instead of but-for cause. That interpretation would eliminate the advantages of the WARN Act's standalone "natural disaster" exception. Proximate cause is typically fact-intensive and hard to resolve early in litigation. Proximate cause would functionally eliminate the "natural disaster" exception by making it as hard to resolve as the "unforeseeable business circumstances" exception—if not harder.

That said, even if the "natural disaster" exception required proof of proximate cause, the Appellants err in assuming that a pandemic like COVID-19 cannot possibly be the proximate cause of layoffs. That assumption rests on a faulty premise—that a natural disaster can be the proximate cause of a plant closing or mass layoff under the WARN Act only if it destroys infrastructure or otherwise makes it impossible for the employer to operate. *See* Easom Br. 27; *see also* U.S. Amicus Br. 22–23 (suggesting that layoffs directly caused by an economic downturn cannot be proximately caused by COVID-19). That's too narrow a view of natural disasters, business operations, and proximate cause. Businesses use capital, facilities, labor, and customers, and a disaster that destroys the supply of labor and the demand for many goods and services (as COVID-19 did) is no less the proximate cause of layoffs than a disaster that destroys capital and facilities. Reasonable people could conclude that layoffs implemented at the start of the pandemic were proximately caused by COVID-19.

ARGUMENT

I. Proximate causation would eliminate the unique advantages of the "natural disaster" exception.

The WARN Act's principal requirement is that covered employers give employees at least 60 days' notice before a mass layoff or plant closing. *See* 29 U.S.C. § 2102(a). The notice must be specific enough for employees to learn "whether their jobs will continue to exist and how long they may be without work." Final Rule: Worker Adjustment and Retraining Notification, 54 Fed. Reg. 16,042, 16,063 (Apr. 20, 1989); *see* 20 C.F.R. § 639.7 (Content of Notice). An employer who fails to give enough notice faces substantial liability. *See* 29 U.S.C. § 2104(a).

Though employers often have superior information about their upcoming employment decisions—information employees can use to make informed decisions about their own lives—Congress recognized in the WARN Act that employers do not always have that information in advance and that holding employers liable for every failure to provide 60 days' notice would sometimes cause greater injury to employers, employees, and their communities. Thus the Act's 60-day notice requirement is moderated by three commonsense exceptions. The "faltering company" exception applies when providing 60 days' notice would be counterproductive to the employer's efforts to raise capital to sustain its business and avoid a shutdown. *See* 29 U.S.C. § 2102(b)(1). The "unforeseeable business circumstances" exception applies when a sudden business event makes it impossible

(or, at least, unreasonable) to require 60 days' notice. *See id.* § 2102(b)(2)(A). And the "natural disaster" exception applies when a catastrophe—which employers and employees learn about and experience together—makes providing 60 days' notice unnecessary. *See id.* § 2102(b)(2)(B).

The structure of these exceptions supports the Appellee's understanding of the "natural disaster" exception. Though natural disasters can be seen as a type of unforeseeable business circumstance, Congress created a specific "natural disaster" exception and made it different from the general "unforeseeable business circumstances" exception.

Because many events—canceled contracts, bad investments, or government-imposed restrictions—can be framed as "business circumstances that were not reasonably foreseeable as of the time that notice would have been required," 29 U.S.C. § 2102(b)(2)(A), the "unforeseeable business circumstances" exception contains important limits. An employer must demonstrate that the relevant circumstances were "not reasonably foreseeable," *id.* § 2102(b)(2)(A), and must give employees "as much notice as is practicable," *id.* § 2102(b)(3). Reasonableness, foreseeability, and practicability usually are fact-intensive issues; they may require discovery and resolution by a trier of fact. As a result, the "unforeseeable business circumstances" exception is often ill-suited to resolution early during litigation, such as on a motion to dismiss. The cost and effort of litigating the "unforeseeable business circumstances" exception limit the practical relief it affords employers.

By contrast, fewer events qualify as natural disasters. A natural disaster is when powerful forces beyond human control cause serious and widespread harm. They affect large areas. They are indiscriminate, hurting employers and employees alike. These qualities of natural disasters inherently limit the "natural disaster" exception's availability.[2] Artful pleading cannot transform an ordinary business circumstance into an extraordinary natural disaster, so there is no justification for judicially limiting the "natural disaster" exception or making it harder for employers to satisfy.

Yet that is what the Appellants and the United States demand when they argue in favor of interpreting the "natural disaster" exception as requiring *proximate* or *direct* causation instead of *but-for* causation. *See* Easom Br. 38–42; U.S. Amicus Br. 10–18. But-for causation is the lowest level of causation, "the minimum concept of cause." *Burrage v. United States*, 571 U.S. 204, 211 (2014) (quoting *United States v. Hatfield*, 591 F.3d 945, 948 (7th Cir. 2010)). Higher levels of causation, like proximate or direct causation, are more fact-intensive. They require ruling out

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2 For these reasons, the Appellants are wrong that a pandemic cannot qualify as "any form of natural disaster." *See* Easom Br. 24–37 (citation omitted). The Appellants infer that only "geological or meteorologic" events qualify because the three exemplary natural disasters Congress listed in the statute are geological or meteorologic events. *Id.* at 27. The Appellants' view violates the basic rule of statutory construction that a list of examples, preceded by words like "such as" or "including," are neither exhaustive nor exclusive. *See* Scalia & Garner, READING LAW 132 (2012). The three examples do not implicitly change what Congress wrote ("any form of natural disaster") into something narrower ("geological or meteorologic forms of natural disaster").

secondary or tertiary causes and making value judgments, which often necessitates discovery and resolution by a trier of fact. On the Appellants' view, the "natural disaster" exception is just as fact-intensive as the "unforeseeable business circumstances" exception.

Congress wouldn't have created separate exceptions for unforeseeable business circumstances and for natural disasters if Congress did not intend to provide *greater* relief to employers recovering from natural disasters.[3] Thus, the structure of the Act's exceptions refutes the Appellants' interpretation, which would make that relief practically unavailable.

Common sense also refutes the Appellants' interpretation. Natural disasters cause widespread harm, and all available resources are needed for recovery. The proximate-cause interpretation of the "natural disaster" exception would divert substantial resources to litigation and slow recovery. And it would put employers in an impossible position during and after a natural disaster: provide 60 days' notice and forgo speedy layoffs (which will drain resources) or press forward with speedy layoffs and defend their decisions in litigation (which also will drain resources). Litigating proximate cause drains judicial resources, too: because natural disasters

3 Legislative history shows that Senators paid special attention to the question of causation during floor debates, where they considered—but then abandoned—inserting the adverb "directly" into the text. *See* 134 Cong. Rec. 16,122–24 (1988). This demonstrates Congress's awareness that the enacted text extends the "natural disaster" exception to downstream employers distant from a covered disaster.

affect entire communities, federal courts will face a flood of lawsuits challenging many employers' responses to a single disaster.

Rejecting but-for causation for the "natural disaster" exception functionally merges the two exceptions and eliminates the advantages of having a separate exception. By contrast, a but-for causation standard makes sense of the WARN Act's structure and gives effect to the distinct exceptions to the 60-day notice requirement.

II. A pandemic like COVID-19 can be the proximate cause of mass layoffs or plant closures.

Though this case is about *one* natural disaster, this Court's interpretation of the WARN Act's "natural disaster" exception will be precedent for *every* natural disaster. Global pandemics are rare, but every year, the States comprising the Fifth Circuit are struck by other forms of natural disasters, especially hurricanes. Employers in this Circuit need to know, before disaster strikes, whether the "natural disaster" exception requires proximate causation or but-for causation.

If this Court concludes that proximate causation applies, that should not end the inquiry here. The Appellants and United States appear to presume that the Appellee cannot prevail if proximate causation applies, in part because the district court observed that "an economic downturn in the oil business caused US Well Services to order a mass layoff on March 18, 2020." *Easom v. U.S. Well Servs., Inc.*, 527 F. Supp. 3d 898, 915 (S.D. Tex. 2021). Relatedly, the Appellants contend that COVID-19 could not possibly have caused the layoffs because the disease did not

"destroy[]" any wells or render them "inoperable." Easom Br. 8. In other words, the Appellants and United States insist that a natural disaster can be the proximate cause of a mass layoff only if the disaster incapacitates an employer's capital or facilities.

The Appellants' view of business enterprises is overly simplistic. Businesses rely on capital, facilities, labor, and customers. *See Comm'r v. Culbertson*, 337 U.S. 733, 740 (1949). Natural disasters can proximately affect a business's capital and facilities, as the Appellants concede. Natural disasters also can proximately affect a business's labor or customer base.

COVID-19 did not level buildings, true, but that's only to say that COVID-19 is not the kind of natural disaster that affects capital and facilities. COVID-19 is the kind of natural disaster that affects labor and customers. When the pandemic arrived in March 2020, many employees could not or would not go to work. Even where traveling out of one's home was not legally restricted, it was widely viewed as a substantial risk for contracting and spreading the disease, and most Americans responded by staying home.

A pandemic may be unlike a flood that wipes out a factory; it is more like a flood that spares a factory but wipes out roads and bridges that are needed by employees to reach the workplace. If employees cannot reach the factory until roads and bridges are rebuilt, this surely means that layoffs were proximately or directly caused by the flood. So too here. *See* Elizabeth Weber Handwerker et al., *Employment Recovery in the Wake of the COVID-19 Pandemic*, MONTHLY LAB. REV., U.S. BUREAU OF

LAB. STATS. (Dec. 2020), *available at* https://doi.org/10.21916/mlr.2020.27 ("The COVID-19 pandemic is unusual because it also disrupts labor supply. Health concerns, family demands, and government policies all play roles in who can work and when."). Economists already have observed that the unemployment/re-employment cycle during and after COVID-19 looks exactly as it does during and after other natural disasters, like floods and hurricanes. *See* Steven M. Mance, *Estimating State and Local Employment in Recent Disasters—from Hurricane Harvey to the COVID-19 Pandemic*, MONTHLY LABOR REVIEW, U.S. BUREAU OF LAB. STATS. (Apr. 2021), *available at* https://doi.org/10.21916/mlr.2021.9. ("The steepness and suddenness of these job losses, followed by a rapid (if partial) recovery, were more reminiscent to the losses seen after major hurricanes than those seen during a typical recession.").

The Appellants' position is legally erroneous because it ignores COVID-19's direct impact on the American workforce and pays no attention to the possibility that the Appellee's employees were unable or unwilling to report to work in and after March 2020.

Instead, the Appellants and the United States posit only a tenuous connection between the Appellee's layoffs and COVID-19: COVID-19 caused people to stop traveling, which in turn caused reduced demand for fuel, which in turn caused oil companies to stop "pay[ing] for the fracking services that Defendant offered," which in turn caused the Appellee to lay off employees. Easom Br. 8. In the Appellants'

view, that chain of events shows that COVID-19 was, at most, an indirect cause of the Appellee's layoffs. But the pandemic tells a different story. Ask any ordinary person why, in 2020, high school graduations were canceled, why children couldn't visit grandparents, why movie theaters, restaurants, and bars closed, or why manufacturers began mass producing ventilators and face masks. Most will answer "COVID-19"—even though the novel coronavirus that causes the disease did not immediately cause those things. *See, e.g.*, Bill Shaikin, *As Sports Shut Down, Little Guys Do Too*, L.A. TIMES, (Mar. 15 2020) ("four major sports leagues shutting down indefinitely because of the coronavirus pandemic"); Jesse Newman, *Closed Because of the Coronavirus, Restaurants Clear Out Their Pantries*, WALL ST. J. (Apr. 4, 2020); Robert Channick, *Glassdoor Lays Off 300 Workers Due to COVID-19*, CHI. TRIBUNE (May 12, 2020).

III. The ramifications of this Court's decision will be widely felt.

Congress designed the WARN Act's 60-day notice requirement to apply to plant closings and mass layoffs caused by events that can reasonably be anticipated. It is equally clear that the statute's 60-day notice requirement does not apply to large-scale events that arise without warning. This is why the Act contains the "natural disaster" exception. When natural disasters occur, requiring the continuation of employment for 60 days would cause greater dislocation by causing more damage—indeed, threatening the very existence—of businesses that desperately need to

conserve resources to make it more likely that affected employees can eventually be reemployed.

When the full force of the COVID-19 pandemic hit the United States in March 2020, the national layoff rate hit its highest recorded rate because employers in all industries quickly responded to the disaster. *See Layoffs and Discharges in Small, Medium, and Large Establishments*, BUREAU OF LAB. STATS., U.S. DEP'T OF LAB., THE ECONOMICS DAILY (Oct. 14, 2020), *available at* https://www.bls.gov/opub/ted/2020/layoffs-and-discharges-in-small-medium-and-large-establishments.htm. As the national unemployment numbers "surged to 17.7 million, the highest quarterly average in the history of the data series," it is remarkable that "[v]irtually all of this increase consisted of people on *temporary layoff*." Sean M. Smith et al., *Unemployment Rises in 2020, as the Country Battles the COVID-19 Pandemic*, MONTHLY LABOR REVIEW, U.S. BUREAU OF LAB. STATS. (June 2021), *available at* https://www.bls.gov/opub/mlr/2021/article/unemployment-rises-in-2020-as-the-country-battles-the-covid-19-pandemic.htm (emphasis added).

As the label suggests, temporary layoffs occur when furloughed employees expect to be recalled, and that is exactly what happened and what continues to happen. The number of American reporting that they are on temporary layoff has dropped by almost 90% from their pandemic highs. *See Employment Situation News Release*, U.S. BUREAU OF LAB. STATS. (June 4, 2021), *available at* https://www.bls.gov/news.release/archives/empsit_06042021.htm. Employees are

being recalled back to work. Though some businesses expect to have fewer employees going forward, the vast majority expect to have at least as many as they had before the pandemic. *See Nearly 8 in 10 Small Businesses Now Fully or Partially Open, New Poll Shows*, U.S. CHAMBER OF COMMERCE (June 3, 2021), *available at* https://www.uschamber.com/press-release/nearly-8-10-small-businesses-now-fully-or-partially-open-new-poll-shows.

Macroeconomic data do not tell individual stories, yet they still suggest that when the pandemic hit, business made difficult decisions to ensure their survival and, thus, to protect their long-term ability to employ workers. Businesses that made those difficult decisions are now rehiring employees. Though tough and unfortunate, last year's immediate layoffs are one reason why the domestic economy is bouncing back so quickly and strongly.

Proliferating WARN Act litigation, however, poses a real threat to recovery. Most business owners report they are worried about having to defend against lawsuits related to the coronavirus. *See Nearly 8 in 10 Small Businesses Now Fully or Partially Open, New Poll Shows*, U.S. CHAMBER OF COMMERCE (June 3, 2021), *supra*. A survey of federal dockets in the last year validates those concerns. Twenty-five percent of labor and employment litigation initiated this year relates to the pandemic. *See Coronavirus Lawsuits More Than Double In 2021*, JDSUPRA (June 8, 2021), *available at* https://www.jdsupra.com/legalnews/coronavirus-lawsuits-

more-than-double-3975643. Employers in a wide range of industries—travel,[4] retail,[5] manufacturing,[6] and more[7]—have been hit with class-action lawsuits challenging whether the employment decisions they made last year comported with the WARN Act's advance-notice requirement. Ironically, these lawsuits are possible only because the employers survived the pandemic by making the hard choice to lay off employees temporarily.

These suits are just the beginning. Whole swaths of the economy will face hard-to-resolve class actions challenging last year's layoffs if the district court's interpretation of the "natural disaster" exception is overturned. If WARN Act class actions can be brought on behalf of millions of workers, damages could easily run

4 *See* Complaint, *Balderen v. Four Seasons Miami Emp. Inc.*, No. 1:21-cv-21842-JAL, 2021 WL 1974299 (S.D. Fla. May 17, 2021); Class Action Complaint, *Brazier v. Real Hosp. Grp., LLC*, No. 1:20-cv-08239, 2020 WL 5889405 (S.D.N.Y. Oct. 3, 2020); Class Action Complaint, *Turner v. Rosen Hotels & Resorts, Inc.*, No. 6:21-cv-00161 (M.D. Fla. Jan 22, 2021).

5 *See* Class Action Complaint, *Duffek v. iMedia Brands, Inc.*, No. 0:21-cv-01413, 2021 WL 2477082 (D. Minn. June 16, 2021); Class Action Complaint, *Calero v. Fanatics, Inc.*, No. 8:20-cv-02114, 2020 WL 5417019 (M.D. Fla. Sept. 9, 2020).

6 Class Action Complaint, *Jones v. Scribe Opco, Inc.*, No. 8:20-cv-02945, 2020 WL 7250767 (M.D. Fla. Dec. 9, 2020).

7 Complaint and Demand for Jury Trial, *Butler v. Portfolio Recovery Assocs., LLC*, No. 2:20-cv-00403-AWA-DEM, 2020 WL 4452088 (E.D. Va. May 12, 2020); Class Action Complaint, *Tooley v. Quickway Transp., Inc.*, No. 3:21-cv-00081 (M.D. Tenn. Feb. 3, 2021); Complaint, *Colmone v. Fid. Nat'l Fin., Inc.*, No. 1:20-cv-05616 (N.D. Ill. Sep 22, 2020).

into the billions, harming American companies just as they are starting to recover from a once-in-a-lifetime pandemic.

*** *** ***

Few statutes have an explicit carveout for natural disasters. But the WARN Act does. Congress presciently understood that restricting employers' flexibility to respond to natural disasters with layoffs would compound and prolong the economic consequences. And so the "natural disaster" exception to the Act's 60-day notice requirement clearly shields employers who order mass layoffs in a disaster's wake. The contrary position of the Appellants and the United States contravenes the text and structure of the WARN Act, frustrates employers' well-founded reliance interests, and carries significant ramifications for economic recovery. This Court should affirm the district court's sound decision.

CONCLUSION

The order on appeal on should be affirmed.

Respectfully submitted,

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December 2021

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing I certify that I electronically filed the foregoing BRIEF OF AMICUS CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLEE AND AFFIRMANCE with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Philip A. Miscimarra

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 29(a)(5), I certify that BRIEF OF AMICUS CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLEE AND AFFIRMANCE meets the type-volume limitations of Rule 29(a)(5) because it contains 4,051 words.

s/ Philip A. Miscimarra