

NOT YET SCHEDULED FOR ORAL ARGUMENT
Appeal No. 22-7063

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN SOCIETY FOR TESTING AND MATERIALS; NATIONAL FIRE
PROTECTION ASSOCIATION, INC.; AMERICAN SOCIETY OF HEATING,
REFRIGERATING, AND AIR-CONDITIONING ENGINEERS, INC.

Plaintiffs-Appellants,

V.

PUBLIC.RESOURCE.ORG, INC.

Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Hon. Tanya S. Chutkan, Case No. 1:13-cv-1215-TSC

**MOTION BY AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES FOR LEAVE TO FILE BRIEF AS AMICUS
CURIAE IN SUPPORT OF DEFENDANT-APPELLEE AND
AFFIRMANCE**

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December 9, 2022

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF

The American Federation of State, County and Municipal Employees (the “Union”) hereby moves this Court pursuant to Fed. R. App. P. 29(a)(3) and D.C. Cir. Rule 29(a)(3) for leave to file an *amicus curiae* brief in the above captioned matter in support of the Defendant/Appellee and affirmance.

The Union and its members have an interest in the disposition of this case because the decision directly affects its members, workers who make up the backbone of their communities. The Union was founded in 1936 to protect civil service jobs, fight against political patronage, and ensure fair wages and safe workplaces. *About AFSCME: History, AFSCME, <https://www.afscme.org/about/history>* (last visited Nov. 21, 2022). Today, the Union represents the interests of over one million workers who “provide the vital services that make America happen, [including] ... nurses, corrections officers, child care providers, emergency medical technicians, and sanitation workers.” *Questions & Answers About AFSCME, 3, 12 (2017), AFSCME, <https://www.afscme.org/about/AFSCME-WMAH-QA-Booklet.pdf>*. The Union advocates on behalf of its members to ensure their wages, benefits, and position in the workplace are level with the critical work they perform.

The Union takes an interest in a wide range of issues that affect their members, from adequate compensation, to discrimination in the work place, to economic

security. *See, e.g., Amici Curiae* Brief of Inter Faculty Organization, Minnesota Nurses Association of Professional Employees, the American Federation of State, County and Municipal Employees Council 5, Minnesota State College Faculty, State Residential School Educational Association, and Middle Management Association, *O’Neill v. Schowalter*, Minn. Dist. Ct., (62-CV-20-5865) (2021) (arguing that overturning the 2.5% raise to all state employees would cause substantial prejudice to the tens of thousands of employees who have relied on the challenged pay increases for months); Brief of the American Federation of Labor and Congress of Industrial Organizations as *Amicus Curiae* in Support of the Employees, *Bostock v. Clayton County, Georgia*, 590 US __ (2020) (No. 17-1618) (arguing that it should be unlawful for employers to discriminate against any worker with respect to their sexual orientation); Brief of *Amici Curiae* Communications Workers of America, Service Employees International Union, American Federation of Teachers, American Federation of State, County and Municipal Employees and National Employment Law Project in Opposition to Defendant’s Motion to Dismiss, *Jones v. U.S. SCRIBE OPCO, INC. d/b/a/ BIC GRAPHIC*, M.D. Fla. Tampa Div. (No. 20-cv-02945-VMC-SPF) (2022) (arguing that the “natural disaster” exception to the Warn Act’s 60-day notice requirement before a mass layoff does not apply to the COVID-19 pandemic).

The Union has an interest in this case because the Union and its members need unhindered access for themselves and the public to the incorporated standards posted by Public.Resource.Org, Inc. in order to competently engage in discussions about the standards that govern their workplaces and duties, to negotiate with management for safer workplaces, and to ensure they are performing their duties as required by law. The posting of the standards by Public.Resource.Org. improves Union members' ability to access the standards they need.

The Union's brief is desirable in order to inform the Court of the Union's members' need for free and unhindered access to the incorporated standards to empower workers to competently engage in discourse about the laws that govern their workplaces and duties, to negotiate with management for safer workplaces, and to ensure they are performing their duties as required by law. The Union's brief is relevant because the District Court's decision that Public.Resource.Org's posting of standards constituted fair use rests in part on a finding that the use of the standards promotes public debate, JA__ (Dkt-239-26), and provides information essential to comprehending one's legal duties, JA__ (Dkt-239-27).

Dated: December 9, 2022

By: /s/ Rebecca Chambers

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this 9th day of December 2022, she caused the foregoing “Notice by American Federation of State, County and Municipal Employees of Intent to File Brief as Amicus Curiae in Support of Defendant/Appellee” to be electronically filed using the Court’s CM/ECF system, which served a copy of the document on all counsel of record on the case.

December 9, 2022

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ADDENDUM

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), *Amicus Curiae* certifies all parties, amici, rulings, and related cases appear in the Brief for BRIEF OF APPELLEE PUBLIC.RESOURCE.ORG, INC.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. Rules 26.1 and 28(a)(1)(A), *amicus curiae* the American Federation of State, County and Municipal Employees (the “Union”) submits the following corporate disclosure statement:

The Union is the nation’s largest and fastest growing public service employees’ union. It is an unincorporated membership organization. No publicly held corporation owns 10 percent or more of the Union’s stock.