

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

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**AMAZON.COM SERVICES, LLC,**

Employer,

and

Case No. 10-RC-269250

**RETAIL, WHOLESALE AND  
DEPARTMENT STORE UNION,**

Petitioner.

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**MOTION OF THE CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE***

The Chamber of Commerce of the United States of America (“Chamber”) respectfully moves for leave to file the attached *amicus curiae* brief in the above-captioned matter. The issue before the National Labor Relations Board in this case is how to conduct the representation election in this matter. The Regional Director ordered a mail ballot election, and Amazon.com Services, LLC (“Amazon”) now seeks review of that decision by the Board.

The Chamber has a clear and important interest in the development of election procedures under the National Labor Relations Act. It 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 sector, and from every region of the country. The Chamber also advocates for labor policies that ensure its members and their employees benefit from the full protections of the Act, without sacrificing safety.

The Chamber writes separately from the parties and believes the brief will benefit the Board in deciding the issue because the regulated community would benefit from a clearer explanation of the manner in which Regional Directors should apply the Board's decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), regarding whether to hold elections in person or by mail during the COVID-19 pandemic. The Chamber believes the Board should more thoroughly consider the relatively low voter turnout in representation elections held by mail, and more clearly explain the steps employers can take to allow representation elections to proceed safely and with maximum participation. As such, the Chamber believes the Board should grant review of the Decision and Direction of Election to examine these issues.

The Chamber has a strong interest in ensuring that representation elections during the COVID-19 pandemic are held safely and preserve the rights of employees and employers under the Act. Accordingly, the Chamber respectfully requests leave to file the accompanying brief, *amicus curiae*.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on February 3, 2021, I filed the Motion of the Chamber of Commerce of the United States of America for Leave to File a Brief Amicus Curiae and the accompanying Amicus Curiae Brief with the National Labor Relations Board and will serve a copy via email on the following:

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**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF  
AMERICA AS *AMICUS CURIAE***

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## INTRODUCTION

The Chamber of Commerce of the United States of America (“Chamber”) supports review of the Decision and Direction of Election issued in this matter on January 15, 2021. The Chamber believes the regulated community would benefit from a clearer explanation of the manner in which Regional Directors should apply the Board’s decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), regarding whether to hold elections in person or by mail during the COVID-19 pandemic.

## INTEREST OF THE CHAMBER

The Chamber is the world’s largest business federation. It 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 sector, and from every region of the country. The Chamber represents both union and non-union employers, and nearly all of its members are subject to the requirements of the National Labor Relations Act (“the Act”).

The Chamber has a clear and important interest in the development of election procedures under the Act. The Chamber also advocates for labor policies that ensure its members and their employees benefit from the full protections of the Act, without sacrificing safety.

## ARGUMENT

### **I. The Board Should Review the Regional Director’s Decision and Direction of Election to Examine Issues with Decreased Voter Turnout During Mail Ballot Elections and Provide Clearer Guidance for Determining the Proper Method of Election during the COVID-19 Pandemic.**

There are many potential justifications for adjusting the Board’s usual and longstanding preference for in-person elections, and the Chamber lauds the Board’s efforts to ensure employee safety. As the pandemic continues, however, the Board should provide further guidance regarding the circumstances under which employees can safely participate in elections, while favoring a

process that maximizes employee participation and safeguards the rights of employees and management under Section 7 of the Act.

Historically, mail ballot union elections have resulted generally in reduced voter turnout and, as a consequence, a less accurate representation of the preferences of the entire voting unit. Indeed, Board statistics show that whereas in-person election turnout typically exceeds 90 percent, it falls to just over 70 percent in mail-in elections. Reduced turnout is not desirable in the Board election process, because a majority of the voters decides the question of union representation for the entire bargaining unit.

The Board has not addressed the significant turnout differences between mail-in and in-person voting in the context of the current pandemic. In granting Amazon's request for review, the Board should more thoroughly address the question of why participation drops in mail ballot elections, and whether the reasons require any adjustment to the analysis set forth in *Aspirus Keweenaw*. Are ballots more easily spoiled without the guidance of an on-site Board agent? Does mail-in voting pose more of an inconvenience for voters, despite its goal of facilitating access to the ballot box? These key questions should be a consideration in any Board policy regarding the propriety of mail ballot elections.

Of course, the most important question regarding Board elections held during the COVID-19 pandemic is safety—of employees, union and management personnel, and the Board staff conducting the elections. Elections through in-person voting can occur safely when proper precautions and protective measures are in place. In this regard, most employers operating through the pandemic have taken extensive measures to protect their employees, sometimes in ways that far exceed the protections used by local officials during public elections.

In this case, Amazon has offered to construct, at its own expense, heated tents so the election could be held outside, and to expand election hours to avoid crowding. Despite these efforts, the Regional Director concluded that the *Aspirus Keweenaw* factors were not met. The Chamber believes the entire employer community would benefit from a more thorough explanation of the types of protective measures and factual circumstances the Board believes could allow in-person elections to take place amid the pandemic.

The Board should also review this case because of its significance. The Board's rulings in this matter will be precedent-setting for many employers. Moreover, the Board's decision will impact the many thousands of employees eligible to vote in the election, who should have an optimum chance to participate.

### **CONCLUSION**

Board representation elections are vitally important. Given the stakes in this and in all representation proceedings, the Board's case handling procedures should favor maximum employee participation, where it is safe to do so. This case presents the Board with an important opportunity to clarify the standards that Regional Directors should consider when making election procedure decisions during the COVID pandemic. The Chamber encourages the Board to seize that opportunity.

Respectfully submitted,

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