

No. 24-232

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**In the  
Supreme Court of the United States**

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DUKE BRADFORD AND ARKANSAS VALLEY  
ADVENTURE, LLC D/B/A AVA RAFTING AND  
ZIPLINE,

*Petitioners,*

v.

U.S. DEPARTMENT OF LABOR, ET AL.,

*Respondents.*

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**On Petition for Writ of Certiorari to  
the United States Court of Appeals  
For the Tenth Circuit**

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**BRIEF OF SAFARI CLUB INTERNATIONAL  
AS AMICUS CURIAE IN SUPPORT  
OF PETITIONERS**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....ii

INTEREST OF  
SAFARI CLUB INTERNATIONAL..... 1

INTRODUCTION AND  
SUMMARY OF ARGUMENT ..... 3

ARGUMENT..... 4

    I.    The DOL Rule will harm the outfitting and  
          guided hunting industry, contrary to the  
          Procurement Act’s intent..... 5

    II.   The DOL Rule will diminish access to public  
          lands for hunters..... 10

    III.  The DOL Rule will harm rural economies and  
          state conservation interests. .... 16

CONCLUSION ..... 19

## TABLE OF AUTHORITIES

### Cases

<i>Bunn v. Perdue</i> , 966 F.3d 1094 (10th Cir. 2020) .....	5
<i>UAW-Lab. Emp. &amp; Training Corp. v. Chao</i> , 325 F.3d 360 (D.C. Cir. 2003) .....	4
<i>United States v. Mendoza</i> , 698 F.3d 1307 (10th Cir. 2012) .....	5

### Statutes

16 U.S.C. § 668dd(a)(3)(C) .....	14
16 U.S.C. § 668dd(a)(4)(K) .....	11
40 U.S.C. § 101 .....	4, 10
ALASKA STAT. § 16.05.407 .....	12
Federal Property and Administrative Services Act of 1949, Pub. L. No. 81-152, 63 Stat. 377 (June 30, 1949); 40 U.S.C. § 101 <i>et seq.</i> .....	3
WYO. STAT. ANN. § 23-2-401 .....	12

### Other Authorities

Congressional Research Service, Hunting and Fishing on Federal Lands and Waters: Overview and Issues for Congress (updated Feb. 14, 2018) ..	12
Southwick Assocs., Economic Impacts of Hunting and Target Shooting Technical Report (Dec. 2021) .....	18
Southwick Assocs., Hunting in America: An Economic Force for Conservation (2012) .....	17
U.S. Fish & Wildlife Serv., 2022 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (2022) .....	18

### Rules

Fed. R. Evid. 201(b)(2) .....	5
Sup. Ct. R. 37(1) .....	2

**INTEREST OF SAFARI CLUB  
INTERNATIONAL<sup>1</sup>**

Safari Club International (“SCI”) is a nonprofit I.R.C. § 501(c)(4) organization with over 100,000 members and advocates worldwide. SCI’s members and supporters include individuals who hunt on federal lands, outfitters who organize hunts on federal lands, and professional hunting guides who work for these outfitters. Many of SCI’s members are impacted by adoption of Executive Order 14026 (“EO”) and the Department of Labor (“DOL”) rule implementing the EO. 86 Fed. Reg. 67126 (Nov. 24, 2021) (“DOL Rule”).

SCI’s missions include the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. SCI fulfills its conservation mission in collaboration with its sister organization, Safari Club International Foundation.

In advancing its missions, SCI advocates to protect and expand hunting opportunities on federal lands. For example, SCI recently submitted a brief to this Court in a case challenging a U.S. Fish and Wildlife Service rule restricting hunting on the Kenai National Wildlife Refuge in Alaska. *Alaska v. Haaland*, No. 22-

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, no party or party’s counsel made a monetary contribution intended to fund the preparation or submission of this brief, and no person or entity besides the amicus curiae made a monetary contribution to the preparation or submission of this brief. Counsel for Safari Club International provided notice to counsel of record regarding SCI’s intent to file this brief.

401. SCI has been involved in many lawsuits to defend hunting access on federal lands in Alaska, including one that remains pending in the Ninth Circuit Court of Appeals. *Alaska Wildlife All. v. Haaland*, No. 22-36001. SCI has been involved in cases to preserve the use of lead ammunition on federal lands out of concern that broad prohibitions on this ammunition will close hunting access for many. *E.g.*, *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, No. 22-35314 (9th Cir.). And SCI previously defended the National Park Service’s use of hunters to manage the Grand Teton National Park elk population—a unique opportunity in a National Park, which underscores the important role of hunting as a management tool and the need for access to federal lands to serve this role. *Mayo v. Jarvis*, 875 F.3d 11 (D.C. Cir. 2017).

SCI submits this brief as *amicus curiae* in support of the Petition for Writ of Certiorari (“Petition”) by Petitioners Duke Bradford and Arkansas Valley Adventure LLC d/b/a AVA Rafting and Zipline (“Petitioners”).

In this brief, SCI will “bring[ ] to the attention of the Court relevant matter not already brought to its attention by the parties” and provide information that will “be of considerable help to the Court.” Sup. Ct. R. 37(1). Petitioners more than adequately set forth several grounds that support granting certiorari. This brief supplements the Petitioners’ explanation of the Tenth Circuit’s errors. Specifically, it further explains how the EO and DOL Rule will not create “an economical and efficient system” as the Procurement Act requires.

Petitioners state that implementation of the EO and DOL Rule will cause outfitters' operating costs to "skyrocket." Pet. at 3. This brief explains why. It also describes how outfitters will be left with a stark choice: to reduce the hours available for staff, to raise prices for the public, or to shut down operations. Each option is a lose-lose. Moreover, a reduction in successful guided hunts will interfere with rural economies and many states' abilities to advance wildlife management objectives. The negative "real world" impacts of the Tenth Circuit's opinion underscore how expansion of the President's authority in the EO, DOL Rule, and Tenth Circuit's opinion does not follow from the Procurement Act,<sup>2</sup> which would not and could not set up a system that causes permitted businesses to fail.

### INTRODUCTION AND SUMMARY OF ARGUMENT

SCI supports the Petition and urges this Court's review because the negative impacts from implementing the EO and DOL Rule extend far beyond harm to Petitioners. The resultant increased costs will damage the guided hunting industry. The Tenth Circuit misconstrued the Procurement Act, and the rationales for the EO and DOL Rule are unsupported in an industry where participants do not make an hourly wage—and where they have no desire to "punch a clock." Further, the negative impacts extend to indi-

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<sup>2</sup> Federal Property and Administrative Services Act of 1949, Pub. L. No. 81-152, 63 Stat. 377 (June 30, 1949); 40 U.S.C. § 101 *et seq.* ("Procurement Act").

viduals who rely on guided hunts to access remote federal lands, to remote communities that benefit from hunting on federal lands, and to state wildlife agencies that rely on guided hunting to advance management objectives. These facts undercut the justification given for the EO and DOL Rule and reinforce the lack of an “economical and efficient system” as applied to the outfitting and guided hunting industry.

### ARGUMENT

The Procurement Act’s purpose is to “provide the Federal Government with an economical and efficient system” for “[p]rocurring and supplying property and nonpersonal services...” 40 U.S.C. § 101. The Tenth Circuit acknowledged that an executive action issued under the Act “must have a sufficiently close nexus to the values of economy and efficiency.” Pet.’s App. at 21a (citing *UAW-Lab. Emp. & Training Corp. v. Chao*, 325 F.3d 360, 366 (D.C. Cir. 2003) (internal quotation, alteration, omitted)). The Circuit found this nexus but ignored the evidence submitted by Petitioners and SCI that undercut the DOL’s justification for its Rule. As demonstrated in this brief and cited declarations, the Tenth Circuit erred given the weight of evidence showing that the EO and DOL Rule do not advance an “economical and efficient” result. Rather, these executive actions will cause detrimental impacts to the very people the actions intend to benefit, as well as the public who rely on guides to access remote federal lands, rural communities who benefit from guided hunting, and state agencies who rely on the success rates of guided hunts to advance management goals. These far-reaching impacts cannot and should not be ignored. This

Court should grant the Petitioner’s request to correct the Tenth Circuit’s errors.

**I. The DOL Rule will harm the outfitting and guided hunting industry, contrary to the Procurement Act’s intent.**

This Court should grant the Petition because application of the EO and DOL to outfitters will harm the outfitting and guided hunting industry. For this reason (among others described by Petitioners), the Tenth Circuit erred in concluding that these executive actions promote the Procurement Act’s purpose. Pet.’s App. at 21a–23a. A \$15-per-hour minimum wage and mandated overtime of \$22.50 per hour will damage outfitting businesses by “skyrocketing” their labor costs, leaving employers and employees worse off than under the current system.

While most outfitters already compensate their employees at or above the federal minimum wage, that compensation can include the value of room and board, tips, and training to advance in the guiding industry. *See, e.g.*, Case No. 22-1023 (10th Cir.), ECF 90, at 46–47, ¶¶ 9-10, 16-17 (S.J. Decl.);<sup>3</sup> *id.* at 40–42, ¶¶ 12, 18 (Kronberger Decl.); *id.* at 36, ¶ 10 (Fejes Decl.); *id.* at

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<sup>3</sup> SCI submitted these supporting declarations in the Tenth Circuit docket for this case, Case No. 22-1023. All cited declarations are appended to SCI’s Tenth Circuit amicus brief, ECF 90. This Court can take judicial notice of facts determined from sources whose accuracy cannot reasonably be questioned, Fed. R. Evid. 201(b)(2), such as filings in another federal court’s docket, *Bunn v. Perdue*, 966 F.3d 1094, 1096 n.4 (10th Cir. 2020) (citation omitted); *United States v. Mendoza*, 698 F.3d 130, 1307 (10th Cir. 2012).



51, ¶ 4 (Stetter Decl.); *id.* at 60, ¶ 5 (Zettel Decl.); *id.* at 30, ¶ 7 (B.H. Decl.). Most guides on multi-day hunts are paid daily rates based on the number of days the trip is meant to last. These rates are not easy to break down into hourly compensation—not least because an employee is paid for the full number of days even if the hunt ends early. *E.g.*, Case No. 22-1023, ECF 90, at 30, ¶¶ 6-8 (B.H. Decl.) (“If I guide a ten-day hunt, then I am paid for ten days, whether the hunt lasts ten days or not.”); *id.* at 35, ¶ 6 (Fejes Decl.); *id.* at 46, ¶¶ 9 (S.J. Decl.); *id.* at 51, ¶¶ 5-6 (Stetter Decl.); *id.* at 56, ¶¶ 7-8 (Stringer Decl.); *id.* at 60, ¶ 5 (Zettel Decl.).

The overtime requirement is exceedingly burdensome when applied to multi-day trips. Outfitters and employees live together in remote hunting camps for weeks or even months at a time. *E.g.*, Case No. 22-1023, ECF 90, at 60, ¶¶ 4-5 (Zettel Decl.); *id.* at 56, ¶ 5 (Stringer Decl.). There can be significant uncertainty about when employees in hunting camps are on or off the clock. *E.g.*, Case No. 22-1023, ECF 90, at 60–62, ¶¶ 4-5 (Zettel Decl.) (“Once they reach the camp area, our staff typically stay for a month or two because it is so remote. However, employees can enjoy ‘downtime’ after their daily activities are complete.”); *id.* at 52, ¶¶ 7-9 (Stetter Decl.) (describing how being “on” and “off” duty can be hard to figure out, such as if the client decides to take a nap in the middle of the day, leaving the hunting guide free); *id.* at 46–47, ¶¶ 9, 13-14 (S.J. Decl.); *id.* at 39–40, ¶ 9 (Kronberger Decl.); *id.* at 30, ¶¶ 6-7 (B.H. Decl.). Larger outfitters are likely to require additional administrative staff just to sort out their costs and off-setting deductions, further exacerbating their labor cost increases. *E.g.*, Case No. 22-

1023, ECF 90, at 62, ¶ 10 (Zettel Decl.); *id.* at 41, ¶ 17 (Kronberger Decl.).

While hunting outfitters eventually may be able to pass these additional costs on to their clients—to the detriment of the hunters—the standard industry practice is for clients to book their hunts two or three years in advance (and sometimes even more, especially for in-demand hunting areas, hunting dates, and species). Thus, outfitters initially must bear most of the costs of implementing the DOL Rule themselves. Contrary to the DOL’s representation or the Tenth Circuit’s view, outfitters anticipate an incredible surge in labor costs—as high as 50%. *E.g.*, Case No. 22-1023, ECF 90, at 61–62, ¶ 9 (Zettel Decl.) (“Implementation of [EO] 14026 will hurt my company because we will significantly lose profits in the short term, and likely lose clients in the longer term. Our trips are booked out two or three years in advance.... Our company cannot pass the increased labor costs back to the government. We cannot pass these costs on to clients who have already booked their trips. Therefore, we are stuck incurring much higher labor costs.... We will have to make tough decisions about our operations and staffing levels. No industry with contracts made for years in the future can withstand wage increases of potentially 50% or more....”); *id.* at 36, ¶ 11 (Fejes Decl.).

Skyrocketing costs leave outfitters with tough decisions about both staffing and scheduling hunts. These decisions may lead to reduced hours or layoffs for current guides and a reduced ability to hire new guides or trainees. *E.g.*, Case No. 22-1023, ECF 90, at 61–62, ¶¶ 9, 13 (Zettel Decl.); *id.* at 53, ¶ 14 (Stetter

Decl.); *id.* at 36, ¶ 11 (Fejes Decl.). This evidence undercuts the EO and DOL Rule’s one-size-fits-all assumption that a higher minimum wage means better morale and work quality.

This assumption is further undercut by evidence showing that guides do not wish to take on the administrative burdens required by the DOL Rule—especially when they receive a *lower* wage due to reduced hours and tips. Guides and other employees choose the outdoor lifestyle because they do not want a “typical 9-to-5 job.” *E.g.*, Case No. 22-1023, ECF 90, at 57, ¶ 12 (Stringer Decl.) (“People do not become a guide for the money; they want the lifestyle and experience.”). These employees appreciate the freedom and the ability to structure their days as needed to succeed on a hunt. *E.g.*, Case No. 22-1023, ECF 90, at 48, ¶ 24 (S.J. Decl.); *id.* at 30, ¶ 4 (B.H. Decl.). They find a career in the outdoors rewarding. *E.g.*, Case No. 22-1023, ECF 90, at 60, ¶ 5 (Zettel Decl.); *id.* at 40, ¶ 12 (Kronberger Decl.).

Implementation of the EO and DOL Rule threatens to dismantle this system. If guides and other employees must keep track of their hours, tips, and the benefits of room, board, license fees, etc., many will find the paperwork to be overwhelming and simply walk away. *E.g.*, Case No. 22-1023, ECF 90, at 57, ¶ 10 (Stringer Decl.) (“Frankly, \$15 per hour, even including overtime, would not be worth the hassle of keeping time and meeting the reporting requirements.”); *id.* at 52–53, ¶ 12 (Stetter Decl.); *id.* at 48, ¶ 24 (S.J. Decl.); *id.* at 32, ¶¶ 15, 20 (B.H. Decl.); *see also id.* at 41, ¶ 16 (Kronberger Decl.) (“The fact that the [EO] creates a demarcation of ‘on’ and ‘off’ times would also cause

confusion among the guides and increase the likelihood that they will just quit to avoid the headache.”).

The DOL’s conclusion that the wage rules will improve employee morale and productivity is equally unsupported. Before, the relationship between outfitters and guides “ha[s] always been [more] like family” than employers and employees. Case No. 22-1023, ECF 90, at 62, ¶ 11 (Zettel Decl.). Requiring guides and other employees to clock in and out, and creating a situation in which employers must take deductions and offsets for the perks they provide, will depersonalize the relationship and reduce morale. *E.g.*, Case No. 22-1023, ECF 90, at 62, ¶ 11 (Zettel Decl.) (“... now you are responsible for documenting [all compensation including room and board]. This will be a tremendous blow to the morale of the industry and a wedge between employer and employee.”); *id.* at 41–42, ¶ 18 (Kronberger Decl.).

A loss of income from tips will exacerbate these increased burdens. *E.g.*, Case No. 22-1023, ECF 90, at 31, ¶ 9 (B.H. Decl.) (“Tipping is an important part of a guide’s compensation. ... In my experience, guides (including myself) factor in a rough tip amount when choosing whether to accept employment for a particular hunting trip or season.”). If outfitters are forced to raise the prices of their hunts to address increased labor costs, guides may suffer due to lower tips. Case No. 22-1023, ECF 90, at 48, ¶ 23 (S.J. Decl.) (“I disagree with the rationale given for the [EO]. It will not ‘enhance productivity’ or ‘generate higher quality work,’ because guides will actually be making less money due to lower tips and therefore not receiving any sort of incentive.”).

Under the EO and DOL Rule, outfitters are in a no-win situation. Higher labor costs will force them to cut employee hours and injure the very people that the EO and DOL Rule purport to protect, whose interests allegedly justify the Rule as an “economic and efficient” action. 40 U.S.C. § 101. Guides will be forced to search for careers outside the guided hunting industry, as a single guiding season will no longer provide a sufficient livelihood. Neither the DOL nor the Tenth Circuit engaged with the negative impacts to employees from the administrative burden, reduced hours, or lost compensation due to the EO and DOL Rule.

In sum, increasing operating costs to the point of shutting down the industry and harming guides who are covered by the minimum wage and overtime requirements is not and cannot have been Congress’ objective in the Procurement Act. This is not an “economical and efficient system.” Rather it is a policy apparently designed to put outfitting and guides out of business. The absurdity of the result undercuts the Tenth Circuit’s reasoning and reinforces the need for this Court’s review.

## **II. The DOL Rule will diminish access to public lands for hunters.**

The Tenth Circuit’s decision also ignores the importance of protecting hunting access, as a practical and a legal matter. Implementation of the EO and DOL Rule will not increase the quality of services provided to the federal government and the general public because it will reduce public access to federal lands.

Outfitters and guides are a gateway to the outdoors. This is as true for hunting as it is for river rafting. Perhaps even more so, given that hunting is a traditional American activity.<sup>4</sup> Many people hone their skills locally hunting for deer, ducks, and turkeys. Many others dream of “bucket list” hunts for exciting game like bear, elk, moose, or bighorn sheep.

Federal lands frequently provide these opportunities. It is a “win-win”: hunters help manage wildlife populations and maintain the integrity of the habitat, while enjoying incredible hunting experiences in pristine areas. It is no wonder at least 76 National Park System units, 436 National Wildlife Refuge System units, more than 246 million acres of Bureau of Land Management lands, and approximately 191 million acres of Forest Service lands are open to hunting.<sup>5</sup>

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<sup>4</sup> For example, the National Wildlife Refuge System Improvement Act recognizes the importance of increasing opportunities for families to experience wildlife dependent recreation on National Wildlife Refuges, “particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting.” 16 U.S.C. § 668dd(a)(4)(K).

<sup>5</sup> Congressional Research Service, *Hunting and Fishing on Federal Lands and Waters: Overview and Issues for Congress* (updated Feb. 14, 2018), at 5–6, <https://crsreports.congress.gov/product/pdf/R/R45103/7> (last visited Sept. 26, 2024) (“Although it is not possible to determine the precise percentage of federal acres open to hunting and/or fishing, based on these data, more than 80% of federal lands and waters appear to be open to hunting in some capacity.”); U.S. Fish and Wildlife Service, Website, *Hunting on U.S. Fish and Wildlife Service Lands and Waters*, <https://www.fws.gov/initiative/hunting/hunting-us-fish-and-wildlife-service-lands-and-waters> (last visited Sept. 26, 2024).

In theory, access to these public lands is open to all. In practice, even the best sportsmen and women require an experienced guide when entering new terrain or seeking challenging game on multi-day hunts. For example, necessary equipment and provisions (horses, wall tents, etc.) are burdensome, expensive, and sometimes unavailable to many hunters, particularly in the wilderness of federal lands. *E.g.*, Case No. 22-1023, ECF 90, at 45, ¶¶ 4-6 (S.J. Decl.). It can be difficult to recover harvested game from remote areas. For these reasons, some states *require* non-residents to use a guide when hunting in particular areas.<sup>6</sup> *E.g.*, Case No. 22-1023, ECF 90, at 45, ¶ 4 (S.J. Decl.) (“Hunting guides are necessary for non-residents in Alaska for certain species (sheep, grizzly bear, brown bear, and goat). In Idaho, there are no legal requirements. But clients choose to use outfitters and guides largely based on the amount of infrastructure required to succeed on a hunt in remote areas....”).

Implementation of the EO and DOL Rule threatens public access to the most remote and pristine federal public lands.<sup>7</sup> Outfitters must recover some of their increased costs to survive. *E.g.*, Case No. 22-1023, ECF 90, at 52–53, ¶ 12 (Stetter Decl.). As outfitters are unable to transfer their increased labor costs back

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<sup>6</sup> *E.g.*, WYO. STAT. ANN. § 23-2-401; ALASKA STAT. § 16.05.407.

<sup>7</sup> Western States are particularly rich in public lands hunting opportunities. For example, almost 90% of hunters in New Mexico, more than 80% of hunters in Utah and Wyoming, and two-thirds of hunters in Idaho use public lands to hunt. Center for Western Priorities, Website, <http://westernpriorities.org/wp-content/uploads/2013/11/Landlocked-Measuring-Public-Land-Access.pdf> (last visited Sept. 27, 2024).

to the federal government, these costs *must* be passed on to clients via higher hunt prices. *E.g.*, Case No. 22-1023, ECF 90, at 43, ¶ 23 (Kronberger Decl.) (“[I]mplementation of the [EO] will damage my business. Although my employees’ compensation will likely remain about the same, the amount of paperwork, the disincentives for attracting and training guides, and the increased compliance costs will likely force me to raise prices, to the detriment of my clients, who will lose some of their current access to remote lands in Alaska.”); *id.* at 36–37, ¶ 13 (Fejes Decl.); *id.* at 53–54, ¶¶ 15-17 (Stetter Decl.); *id.* at 61–63, ¶¶ 9, 14 (Zettel Decl.).

Guided hunts are already far more expensive than hunting on one’s own. A significant increase in prices of 30 to 50% will likely price many clients out of these hunting opportunities. *E.g.*, Case No. 22-1023, ECF 90, at 63, ¶ 14 (Zettel Decl.) (“The biggest thing the EO will do is make it more expensive to go on an outfitted trip; in this era of inclusivity, this EO is counter-productive.”); *id.* at 48, ¶ 21 (S.J. Decl.).

At the same time, outfitters face a shrinking pool of hunting guides. Higher costs will make it more difficult to train new employees into full-fledged guides. *E.g.*, Case No. 22-1023, ECF 90, at 60–61, 63, ¶¶ 6-8, 13 (Zettel Decl.); *id.* at 57–58, ¶ 14 (Stringer Decl.); *id.* at 47–48, ¶ 20 (S.J. Decl.); *id.* at 42, ¶¶ 19-20 (Kronberger Decl.). Individuals who were drawn to the outdoor lifestyle to *avoid* having to “punch a clock” will choose to do something else. *E.g.*, Case No. 22-1023, ECF 90, at 62–63, ¶ 12 (Zettel Decl.); *id.* at 52–53, ¶ 12 (Stetter Decl.); *id.* at 47, ¶ 18 (S.J. Decl.). A shortage of guides will make it hard for outfitters to offer the



same number and quality of hunts. *E.g.*, Case No. 22-1023, ECF 90, at 57–58, ¶ 14 (Stringer Decl.); *id.* at 42–43, ¶¶ 19–21 (Kronberger Decl.). And since a guided hunt is only as good as those who guide it, clients will have fewer opportunities to enjoy these remote and pristine hunts.<sup>8</sup>

The DOL was Aware of these Issues, but simply dismissed them (86 Fed. Reg. at 67194–98, 67206–07, 67211) without ever considering their impact on the public’s access to public lands. SCI raised these issues with the Tenth Circuit, but that court did not address

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<sup>8</sup> The EO and DOL Rule are also at cross purposes with actions taken by other federal agencies to expand hunting access on federal public lands. For example, the National Wildlife Refuge System Improvement Act establishes hunting and fishing as priority uses of refuges, “through which the American public can develop an appreciation for fish and wildlife,” and directs the U.S. Fish and Wildlife Service to give these uses “priority consideration in refuge planning and management.” 16 U.S.C. § 668dd(a)(3)(C). In carrying out this directive, the U.S. Fish and Wildlife Service annually opens new hunting and fishing opportunities on refuges. Announcing the most recent proposal to open and expand hunting opportunities on refuges, the Fish and Wildlife Service Director stated: “Hunting and fishing are traditional recreational activities deeply rooted in America’s heritage. Today, nearly 80 percent of Service stations offer hunting and fishing access that helps boost local economies and connects people with nature.” U.S. Fish & Wildlife Serv., Press Release (Aug. 1, 2024), <https://www.fws.gov/press-release/2024-08/service-promotes-public-access-hunting-and-fishing> (last visited Sept. 26, 2024).

The EO and DOL Rule squarely contradict the objectives and purposes of the federal land management agencies by reducing access to the most remote public lands—lands that may require significant conservation stewardship.

them. The repercussions of the EO and DOL Rule ripple out from outfitters and guides. Outfitters will be forced to make tough choices about increasing the costs of each hunt or offering fewer hunts to their clients—both of which will reduce opportunities for many hunters. *E.g.*, Case No. 22-1023, ECF 90, at 53, ¶ 16 (Stetter Decl.) (“The federal government has a responsibility to the public to allow for enjoyment of federal public lands. The government is tasked with administering these lands in a way that keeps access affordable and safe. The purpose of commercial use on public lands via the outfitting industry is to provide for that enjoyment and meet the demand that the federal administrators cannot meet themselves. Forcing outfitters to increase costs of any guided activity on federal lands runs counter to the government’s responsibility to much of the public. Hunts, as well as many other activities enjoyed on public lands, are already expensive, and being forced to raise the prices as the Executive Order contemplates would make them less affordable and less accessible.”); *id.* at 48–49, ¶ 26 (S.J. Decl.); *id.* at 32, ¶ 19 (B.H. Decl.).

The EO and DOL Rule’s forced increase in hunting prices and the resulting fewer opportunities for guided hunts will harm hunters. Many hunters will no longer be able to afford a guided hunting trip and may never be able to experience the many unique and incredible opportunities that American public lands provide. *E.g.*, Case No. 22-1023, ECF 90, at 48–49, ¶ 26 (S.J. Decl.) (“I am disappointed in the [EO] because I believe it will reduce the number of clients who can participate in hunts. Because we hunt largely in wilderness or in the Alaskan ‘bush,’ most people must have

a guide with support to hunt these remote areas and to recover their animal. With higher prices and fewer guides, fewer clients will be able to take advantage and enjoy these amazing opportunities.”); *id.* at 53, ¶ 16 (Stetter Decl.). Neither the DOL nor the Tenth Circuit engaged with the negative impacts to public lands users caused by the EO and DOL Rule. But these impacts are real, and severe. This Court should grant certiorari to address this issue and the scope of the Procurement Act given the unintended consequences that application of the EO and DOL Rule pose.

### **III. The DOL Rule will harm rural economies and state conservation interests.**

Finally, this Court should grant certiorari because the forced decline in hunters enjoying guided hunts on federal lands has broad negative implications for rural economies and state conservation programs.

Hunting generates a wide range of benefits. One of the most important is its economic support for rural and remote communities. This economic impact goes hand-in-hand with hunting access: when hunters travel somewhere to hunt, particularly an area off the beaten path, “they help support hundreds of thousands of jobs at local stores, restaurants, hotels, manufacturers and other businesses.”<sup>9</sup> As one example, a

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<sup>9</sup> Southwick Assocs., *Hunting in America: An Economic Force for Conservation* (2012), at 2–3, <https://www.fs.usda.gov/biology/resources/pubs/wildlife/HuntingEconomicImpacts-NSSF-Southwick.pdf> (last visited Sept. 27, 2024); *see also* 2018 update to this

2022 study “found that hunters spent about \$380 million in 2020 on hunting in Nevada, on both travel and hunting expenses.” The economic impact was especially realized in rural counties where wildlife is plentiful.<sup>10</sup>

Recreational hunting and shooting generated “over \$65 billion in combined retail sales, and contribut[ed] \$149 billion to the national economy” in 2020. Hunters’ spending “supported nearly 970,000 jobs, creating over \$45 billion in wages and income.”<sup>11</sup> According to the 2022 *National Survey of Fishing, Hunting, and Wildlife-Dependent Recreation*, approximately 6% of the U.S. population hunted in 2022. Hunters spent \$45.2 billion in 2022; 27% of that number (\$12.3 billion), was spent on trip-related expenses.<sup>12</sup> That economic impact is felt largely in rural and remote areas.

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report, available at [https://www.fishwildlife.org/application/files/3815/3719/7536/Southwick\\_Assoc\\_-\\_NSSF\\_Hunting\\_Econ.pdf](https://www.fishwildlife.org/application/files/3815/3719/7536/Southwick_Assoc_-_NSSF_Hunting_Econ.pdf) (last visited Sept. 27, 2024) (finding hunters took 147 million hunting trips in 2016 and spent \$6.3 billion on food, lodging, and transportation).

<sup>10</sup> Univ. of Nevada, Reno, “Nevada hunters generate millions in economic impact for rural communities,” *Nevada Today* (Oct. 10, 2022), <https://www.unr.edu/nevada-today/news/2022/economic-impact-hunting> (last visited Sept. 27, 2024).

<sup>11</sup> Southwick Assocs., Economic Impacts of Hunting and Target Shooting Technical Report (Dec. 2021), at 1 <https://www.sports-mensalliance.org/wp-content/uploads/2022/02/2020-Economic-Impact-of-Hunting-and-Shooting-Technical-Report-V2.pdf> (last visited Sept. 27, 2024).

<sup>12</sup> U.S. Fish & Wildlife Serv., 2022 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (2022), at 19–23 [https://www.fws.gov/sites/default/files/documents/Final\\_2022-](https://www.fws.gov/sites/default/files/documents/Final_2022-)

These areas currently benefit from public hunting; as federal lands access and hunter participation fall, the economic benefit to these communities will also decline.

Similarly, hunting is essential to supporting state conservation programs. A decline in hunters will cause both financial and management harm to these programs.

Excise taxes on hunting, shooting, and fishing equipment generate billions of dollars annually, which is distributed to states to support wildlife and habitat conservation. “These annual payments to state fish and wildlife agencies have resulted in the recovery of deer, turkeys and many non-game species—with benefits to hunters and non-hunters alike.”<sup>13</sup> For example, in 2023 the U.S. Fish and Wildlife Service distributed \$1.6 billion in these funds.<sup>14</sup> Reducing public access, leading to fewer hunters, will reduce this funding as well.

Moreover, states depend on hunters to help achieve species management objectives. For big game, harvest is the only way to control overly abundant populations

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[National-Survey\\_101223-accessible-single-page.pdf](#) (last visited Sept. 27, 2024).

<sup>13</sup> U.S. Fish & Wildlife Serv., Website, Hunters as Conservationists, <https://www.fws.gov/story/hunters-conservationists> (last visited Sept. 27, 2024).

<sup>14</sup> U.S. Fish & Wildlife Serv., Over \$1.6 Billion Will Support State Fish and Wildlife Conservation and Outdoor Access, Press Release (Mar 3, 2023), <https://www.fws.gov/press-release/2023-03/over-16-billion-will-support-conservation-agencies-and-outdoor-access> (last visited Sept. 27, 2024).

and their impacts on habitat. Many outfitters partner with state fish and wildlife agencies to help stabilize wildlife populations in a given area. In remote areas, most hunting offtake occurs during guided hunts. Guided hunts tend to be more successful than non-guided hunts due to the guides' knowledge of the area, preparation, and experience. *E.g.*, Case No. 22-1023, ECF 90, at 45, ¶ 4 (S.J. Decl.); *id.* at 56, ¶ 4 (Stringer Decl.) Hunting is also a valuable means to control invasive wildlife like feral swine.<sup>15</sup> Diminished hunter participation from fewer guided hunting trips will require states to find other ways to manage these species—which will be more expensive and likely less effective.

These unintended consequences highlight how the EO and DOL Rule do not provide an “economical and efficient system” as required by the Procurement Act. Surely, Congress did not intend the Act to impose such unexpected costs on rural economies and state wildlife management programs. This Court should grant the Petition to rectify the Tenth Circuit’s misreading of the Procurement Act to this end.

## CONCLUSION

For the above reasons, SCI respectfully requests that the Petition be granted. The Tenth Circuit erred

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<sup>15</sup> For example, individual National Wildlife Refuges incorporate hunting in their management plans to reduce the impact of invasive species on the habitat and native wildlife populations. *E.g.*, U.S. Fish & Wildlife Serv., Everglades Headwaters Refuge Land Protection Plan (Jan. 2012), at 126, <https://www.fws.gov/sites/default/files/documents/FinalLPPEvergladesHeadwatersNWR.pdf> (last visited Sept. 27, 2024).

in upholding the rationale given for the EO and DOL Rule. This rationale does not make sense as applied to the guided hunting industry. The forced \$15 hourly wage and overtime will not achieve the EO or DOL's goal. Instead, it will be counter-productive, reducing the morale of workers, causing a shortage of qualified guides, increasing training and supervisory costs, and transferring some costs from the employer to the employee—to everyone's detriment, but most of all, the general public's.

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