
In the
Supreme Court of the United States

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**WINSTON-SALEM INDUSTRIES
FOR THE BLIND,**

Petitioner,

v.

**UNITED STATES OF AMERICA;
PDS CONSULTANTS, INC.,**

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT**

**BRIEF OF *AMICUS CURIAE*
CITY OF WINSTON-SALEM
IN SUPPORT OF PETITIONER**

ANGELA I. CARMON
Counsel of Record
WINSTON-SALEM
CITY ATTORNEY
ADA Coordinator
Post Office Box 2511
Winston-Salem, NC 27102
(336) 747-7404
angelac@cityofws.org

JOHN J. KORZEN
WAKE FOREST UNIVERSITY
SCHOOL OF LAW
APPELLATE ADVOCACY CLINIC
Post Office Box 7206
Winston-Salem, NC 27109
(336) 758-5832
korzenjj@wfu.edu

Counsel for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae City of Winston-Salem (“the City”) is a municipal corporation within the State of North Carolina. Formed by the merger of the towns Winston and Salem in 1913, the City has a long tradition of cultivating a diverse and inclusive community. One way the City encourages diversity and inclusion is by its support of Winston-Salem Industries for the Blind (“IFB”).

The City is interested in this matter because the Federal Circuit’s decision below will detrimentally affect some of its most vulnerable residents. Since IFB’s founding in 1936, the City has supported IFB’s goal to create jobs for the blind, the severely disabled, and veterans. As of September 2019, IFB’s Winston-Salem location employed 321 blind or visually impaired individuals, including twenty-seven military veterans. In addition to offering a welcoming environment for blind and visually impaired residents, the City has directly partnered with IFB over the past decade by providing grant funding to create jobs.

The Federal Circuit’s interpretation of the Veterans Benefits, Healthcare, and Information Technology Act of 2006, 38 U.S.C. §§ 8127-8128 (2012) (“VBA”), profoundly harms the City’s blind and disabled communities. Accordingly, the City submits this brief because of the emotional and financial impacts the Federal Circuit’s decision will have on its residents and the City.

¹ This *amicus curiae* brief is presented by a city and submitted by its authorized law officer. *See* Sup. Ct. R. 37.4, 37.6.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Questions Presented are vitally important to the blind and visually impaired residents of the City and other communities where they are employed and are provided services.

In 1936, the Twin City Lions Club founded IFB to support and empower the blind and visually impaired. Despite IFB's humble beginnings as a two-room shop with six blind workers, the organization has grown to become a multimillion dollar-enterprise. IFB is the nation's largest employer of blind and visually impaired workers (by hours worked by the blind and visually impaired). At its Winston-Salem location alone, IFB employed more than 300 blind and visually impaired individuals before the Federal Circuit's decision, including twenty-seven veterans.

IFB is one of several hundred nonprofit agencies that provide goods and services to the federal government under the Javits-Wagner-O'Day Act ("JWOD"). 41 U.S.C. § 8504 (2012). JWOD mandates that federal agencies procure services and products on the AbilityOne Procurement List from nonprofit agencies employing blind and severely disabled persons. *Id.*; *see also* 41 C.F.R. § 51-2.8. The United States Department of Veterans' Affairs (the "VA") is one of IFB's largest clients. IFB has provided items from the Procurement List to the VA for nearly twenty years through VA optical contracts.

IFB's VA optical contracts provide the nonprofit with funds to operate community services. IFB provides job training and medical services to blind and severely disabled members of the community.

These services include an optical center, a community vision center, and programs where children and adults who are blind or visually impaired learn independent living and job skills.

The Federal Circuit's interpretation of the VBA will have a detrimental impact on IFB and the City's residents. The VA optical contracts comprise twenty percent of IFB's total revenue. This loss of VA optical contracts and many millions of dollars in revenue will harm both individuals formerly employed at IFB and the community at large.

ARGUMENT

The City writes separately to detail the harms the Federal Circuit's decision will cause, to illustrate why the Questions Presented are vitally important.

Preliminarily, the City notes that it agrees fully with Petitioner's construction of the statutory texts at issue. *See* Pet. 15-30. The City also agrees that the Federal Circuit, in addition to wrongly construing the text, "ran afoul" of this Court's guideposts for determining Congressional intent. *See* Pet. 31-32. For starters, Congress does not alter regulatory schemes in vague terms or ancillary provisions. *See* Pet. 31; *see also Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1903 (2019) ("[T]he possibility that both state and federal authorities would be left unable to regulate the unique risks posed by . . . uranium mining seems more than a little unlikely, and quite a lot to find buried deep in subsection (k). Talk about squeezing elephants into mouseholes."); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000) ("[W]e are confident that Congress could not have intended to delegate a

decision of such economic and political significance to an agency in so cryptic a fashion.”).

In addition, two possibly conflicting statutes should be harmonized if possible, giving effect to each. *See* Pet. 31; *see also Morton v. Mancari*, 417 U.S. 535, 551 (1974) (“The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.”).

Moreover, repeals of earlier statutes by implication are not favored. *See* Pet. 32; *see also Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 662 (2007) (stating that the Court will not infer a statutory repeal “unless the later statute ‘expressly contradict[s] the original act’” or unless such a construction “is absolutely necessary ... in order that [the] words [of the later statute] shall have any meaning at all”); *Branch v. Smith*, 538 U.S. 254, 274 (2003) (“An implied repeal will only be found where provisions in two statutes are in ‘irreconcilable conflict,’ or where the latter Act covers the whole subject of the earlier one and “is clearly intended as a substitute.”); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1989) (“The statutory provisions at issue here cannot be said to be in ‘irreconcilable conflict’ in the sense that there is a positive repugnancy between them or that they cannot mutually coexist.”).

I. The Questions Presented Are Important Due To The Harm The Federal Circuit's Decision Will Cause.

The Federal Circuit's decision will harm blind and visually impaired adults and children in the City and its surrounding community. As a nonprofit agency, IFB uses its revenue from its VA optical contracts to operate unique and critical programs that support the blind and severely disabled throughout the area. The loss of \$24,000,000.00 in annual revenue stemming from the VA optical contracts represents a loss of twenty percent of IFB's total revenue. This decrease in revenue will necessarily detract from IFB's ability to provide employment to the blind and to provide services to the blind and visually impaired in the City. As a result, the City will be harmed financially.

A. The Federal Circuit's decision will harm blind and visually impaired residents who will lose their jobs.

For more than eighty years, IFB has provided fulfilling jobs for the City's blind and visually impaired residents. These jobs provide competitive pay and benefits, upward mobility, and access to an on-site health facility. As a result of the Federal Circuit's decision, however, numerous employees will lose their livelihood, independence, and sense of purpose, as illustrated below.

IFB is a shining example of a nonprofit committed to addressing the nation's woeful unemployment rate for blind and visually impaired citizens. Through meaningful work, IFB encourages blind and visually impaired employees to develop personal independence. As of September 2019, IFB

employed 321 blind and visually impaired individuals at its location in the City alone. These jobs allowed employees to be productive and contributing members of the community and local economy. Eighty-five percent of these employees had never held a job before working at IFB.

IFB's employees engage in high quality work with the potential for upward mobility and economic self-sufficiency. Recognizing that blind and visually impaired individuals face countless barriers to work, IFB provides robust training for its new employees. IFB also empowers employees to support their families. For example, IFB provides its optical employees based in the City – those fulfilling the VA optical contracts – with more than two million dollars in annual benefits, including health insurance, dental insurance, vacation, holiday and sick pay, bonuses, and retirement. In addition to competitive salaries and health insurance, IFB provides its employees in the City with an indispensable resource – an on-site medical facility. Many of the employees suffer from numerous medical conditions beyond their visual limitations.

The Federal Circuit's decision directly affects scores of employees in the City because the VA has cancelled its optical contracts with IFB. *See* Pet. 34. These cancelled VA optical contracts are having an immediate and measurable effect on employees. Specifically, the cancelled VA optical contracts render 137 jobs obsolete, including the jobs of seventy-six blind individuals, of whom fifteen are veterans. The VA optical contracts represent ninety-seven percent of IFB's optical portfolio. With such a sudden revocation of the VA optical contracts, IFB is unlikely to save the 137 affected jobs.

The Federal Circuit's interpretation of the Rule of Two's prioritization of veteran-owned small businesses over AbilityOne nonprofits has led blind and visually impaired individuals, including blind veterans, to lose their jobs. *See* Pet. 37. The affected employees will not only lose their income and ability to provide for their families but also their access to an on-site medical clinic and relationship with the community.

The seventy percent unemployment rate in the blind community represents the United States' failure to support its blind residents – the United States' economy and society overlook the valuable contributions these individuals can make. *See* American Foundation for the Blind, Key Employment Statistics for People Who Are Blind or Visually Impaired, <https://www.afb.org/research-and-initiatives/statistics/key-employment-statistics#Estimate> (last visited Oct. 6, 2019). Thus, losing stable work is devastating for the seventy-six blind individuals affected by the cancelled VA optical contracts. With low to nonexistent hopes of finding a replacement career, these individuals face years of potential financial and emotional harm. In addition to the harmful effect of losing their work, the affected employees will have to relinquish their hard-earned self-sufficiency and likely rely on public assistance and social welfare programs to survive.

The City recognizes that the VBA exists to serve and protect a deserving class of overlooked individuals, the nation's veterans. However, the Federal Circuit's interpretation of the VBA – to prioritize veteran-owned small businesses over AbilityOne nonprofits – deviates from Congress's intent to empower both veterans *and* blind workers.

Veteran-owned small business need not employ a single veteran. *See* 13 C.F.R. § 125. In contrast, AbilityOne nonprofits, including IFB, must contribute seventy-five percent of employment hours through the work of blind individuals. 41 U.S.C. § 8501 (2012).

A few specific examples illustrate how important the Questions Presented are to the residents of the City employed at IFB:

- *Tracey Williams*: As one of IFB’s newest hires, Tracey Williams recently moved his wife and three young children from Michigan to the City. Tracey reflects fondly on his summer 2019 training, stating, “[IFB] helped set me up for a better life where I could provide for my family. IFB made it possible for me to feel successful as a father and a husband.”
- *Jeff Tolbert*: After working at IFB since 1985, Jeff Tolbert credits IFB with giving him a chance to engage in work he loves. Jeff has earned numerous promotions – from a manufacturing position to now serving as the Director of First Impressions. Knowing firsthand how futile a job search can be for the blind, Jeff realizes that without IFB, he and his coworkers would be lost because “a lot of places don’t hire people who are blind.”
- *Elizabeth Ellerby*: Diabetic complications caused Elizabeth Ellerby to lose her sight eleven years ago. The sudden loss of sight made it impossible for Elizabeth to continue working as a nurse. As a result of losing her sight and suffering from depression, Elizabeth struggled to provide for her legally blind husband and three children, two of

whom also suffer from diabetes. Elizabeth's entire life outlook improved after she moved to the City to work for IFB – Elizabeth now rests easily at night, knowing her job equips her to provide life-dependending health care for her family.

- *Lee Hartline*: Like countless IFB employees, Lee Hartline has found hope and independence through his job at IFB. After receiving a diagnosis of Retinitis Pigmentosa at a young age, Lee worked as a custom cabinet-maker until the degenerative diagnosis prohibited him from continuing. Lee recalls the loneliness and despair that came from losing his work, stating, “When I could no longer work, I lost direction in my life. I was no longer the family breadwinner and depression took over.” After twenty-one years – homebound, divorced, and subsisting off disability – Lee's social worker mentioned IFB. Lee fondly refers to his five years since then at IFB as a “godsend.”
- *Lena Channer*: Tired of feeling like a burden on her family, Lena Channer left behind her life in Miami, Florida to pursue a career at IFB in the City. While she had been previously unable to find a job, Lena credits IFB with making her “feel more independent now than [ever before].” She spends her time at IFB operating a sewing machine and directing visitors in the front office. Lena is grateful because IFB changed her whole life, allowing her to provide for herself for the first time.
- *Rick Gaefe*: Army veteran, former paramedic, and Veterans Support Group founder Rick Gaefe has repeatedly benefited from IFB's on-site medical

clinic. Rick refers to the excellent in-house medical staff at IFB as “truly a life saver” because the team helps Rick and his fellow employees “work without fear.” Rick knows that should a medical issue arise, he will not need to miss work because the on-site staff can assist with his healing and recovery.

- *Scott Smith*: Following a respected military and professional career, Scott Smith was suddenly struck by optic neuropathy in 2010. Scott then worked at companies that failed to supply the assistive technology and resources he needed to succeed and subsequently went on disability and social security. After finding IFB in 2015, Scott moved his life to the City. As a proud veteran, Scott knows his career at IFB is “making a contribution to the country helping veterans” and says his job gives him “great pride to work and serve [his] fellow Veterans so they can see better than [he does].”

In order to ensure that employees like Tracey, Jeff, Elizabeth, Lee, and Lena as well as blind veteran employees like Rick and Scott are able to wake up and know they are going to have purpose in their lives as IFB employees, this Court should review the Federal Circuit's decision.

B. The Federal Circuit’s decision will harm the community.

In addition to harms to citizens employed at IFB, the Federal Circuit’s decision will also harm the broader community. IFB directs resources to address the blind and visually impaired community’s otherwise unmet needs. IFB provides medical, vocational, educational, and enrichment services to

blind and visually impaired children and adults. Ultimately, IFB's provision of these ancillary community services enables the blind and visually impaired community to flourish.

IFB provides medical services to the blind and visually impaired through its Community Low Vision Center ("CLVC"). The CLVC provides exams and adaptive technology to thousands of blind and visually impaired City residents. In fiscal year 2019 alone, the CLVC served more than 3,600 clients. IFB also uses a Mobile Low Vision Center to serve more than seventy of North Carolina's one hundred counties. Through its Focus on Literacy program, IFB provides free exams and adaptive technology – like talking watches and large print books – to children in the community. Exams are essential to inform community members about their health, and adaptive technology assists the blind and visually impaired with day-to-day tasks.

IFB also offers life skills, job training, and enrichment activities to the community. For sighted community members, IFB leads Sensitivity to Blindness trainings. For blind and visually impaired adults, IFB hosts support groups, including a support group for veterans. IFB educational classes provide blind and visually impaired residents with computer and braille classes. Through these classes, individuals develop skills necessary for higher-paying jobs and gain financial independence.

Blind and visually impaired community members can also participate in IFB's recreational programs, such as bowling, darts, and art classes, which help community members thrive socially. IFB also hosts the national Blind Idol singing competition. One

recipient of these services is Lee Hartline. Before participating in IFB services, Lee was homebound for twenty years and suffered from depression. Through IFB, Lee has become empowered socially and financially and is now actively involved in the blind community. Lee now serves as the Vice President for the North Carolina Deaf-Blind Associates.

Furthermore, IFB provides essential services to the City's blind and visually impaired children. IFB empowers blind and visually impaired children through its Student Enrichment Experience ("SEE") after-school and summer programs. SEE programs provide high-impact enrichment in a safe and inclusive setting. SEE programs have a four-to-one student teacher ratio, and many of the SEE program teachers are blind themselves. Through the SEE program, students learn age-appropriate life skills such as reading braille, cane skills, and household chores. These life skills programs allow students to gain independence and empowerment despite their disabilities.

In his SEE classes, ten-year-old David² has learned skills to help his mother around the house. He loves being able to help care for his three-year-old brother. The SEE program also provides cultural enrichment, including music classes, which David loves. According to David's mother, the SEE program's impact on their family has been profound. The family briefly moved to Florida, but, after realizing her son was growing up without the SEE program, David's mother insisted the family return

² A pseudonym.

to the City so that David could continue to benefit from IFB's services.

As part of its investment in vocational and life skills instruction in the community, IFB built Tracy's Little Red School House in 2012. The \$750,000 facility contains adaptive features for blind visitors, such as textured floor tiles to indicate when visitors enter and exit and doorways. Open to all members of the community, the School House has an independent living space that simulates a full apartment. This living space allows the community's blind and visually impaired children and adults to learn life skills such as how to cook, how to make a bed, and how to do laundry using braille-embossed washing machines and dryers. The School House is also equipped with a computer lab and screen reader software so that blind and visually impaired community members can learn computer literacy.

Additionally, IFB partners with the City's school system to provide blind and visually impaired high school students with internships and vocational training during the school day. This partnership gives students specialized training to help them compete in the job market after graduation.

IFB's community services and programs have a lasting impact on Winston-Salem's blind and visually impaired communities, enabling children like David and adults like Lee to thrive, despite their disabilities. Without IFB support, these community needs would go unmet, irreparably harming the City and its residents.

C. The Federal Circuit's decision will harm the City's economy.

If allowed to stand, the Federal Circuit's decision will harm the City's economy because blind citizens may have to leave the City, and income previously earned by IFB and its employees will no longer remain in the City.

IFB's ability to develop consistent work opportunities for blind and visually impaired employees has served as a key attractor for blind individuals considering moving to the City. More than half of IFB's employees moved to the City for the opportunity to work at IFB. In response, the City has invested in resources to aid blind and visually impaired residents by adjusting bus routes when necessary and allocating grant funding for IFB.

Elizabeth Ellerby, an IFB employee, uprooted her life from Charleston, South Carolina to move to the City solely for the chance to work at IFB. Similarly, Lena Channer relocated from North Miami Beach, Florida to the City after she found a job with IFB. Both women, like many other IFB employees, are now able to support themselves financially, patronize local businesses, and contribute to the local economy. These citizens and others who moved to the City specifically for a job at IFB may return to their hometowns if jobs are no longer available at IFB due to the Federal Circuit's decision.

Furthermore, the majority of IFB's revenue stays in the City and its surrounding communities, including \$24,000,000.00 in annual revenue from VA optical contracts that will be lost as a result of the Federal Circuit's decision. IFB contributes more than \$14,000,000.00 in wages to individuals living

and working in the City each year, but due to the cancelled VA optical contracts and resulting layoffs, more than \$3,000,000.00 in wages are immediately at risk. In addition to the lost revenue and lost wages described above, IFB will likely have to lay off more workers as a result of the Federal Circuit's decision. The City will also be harmed by IFB's loss of millions of dollars of revenue that would otherwise stay in the City.

The City will be harmed in other ways as well. Over the last decade, the City has invested nearly \$300,000.00 in IFB, with more than \$100,000.00 going directly to assist IFB with its optical operations. If the Federal Circuit decision stands, IFB will most likely request an increased amount of grant funding from the City.

The City would also lose revenue from a decline in bus passengers. The City's bus service for the disabled, Trans-AID, currently provides an average of 3,400 trips to and from IFB per month. The City also has two fixed bus routes that service IFB, with 1,800 passengers accessing the bus stops at IFB per month. All told, the City would lose many thousands of dollars in mass transit income when blind and visually impaired employees lose their jobs as a result of the Federal Circuit's decision.

Even the City's first responders may be affected by the Federal Circuit's decision. Before IFB established its on-site medical clinic and provided monitoring of chronic conditions, employees with diabetes and other conditions were sometimes stricken at work, necessitating calls to 911 and visits by the City Fire Department. Without the VA optical contracts, however, IFB may need to curtail its on-

site medical clinic, and 911 calls serviced by the City's first responders will increase.

These harms to the City, and to other communities who will be similarly affected by the Federal Circuit's decision, underscore the importance of the Questions Presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Angela I. Carmon
Counsel of Record
WINSTON-SALEM CITY ATTORNEY
ADA Coordinator
Post Office Box 2511
Winston-Salem, NC 27102
(336) 747-7404
angelac@cityofws.org

John J. Korzen
WAKE FOREST UNIVERSITY
SCHOOL OF LAW
APPELLATE ADVOCACY CLINIC
Post Office Box 7206
Winston-Salem, NC 27109
(336) 758-5832
korzenjj@wfu.edu

October 11, 2019 *Counsel for Amicus Curiae*