

No. 23-524

In The

Supreme Court of the United States

AMERICAN FOREST RESOURCE COUNCIL, ET AL.,

Petitioners,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

On Petition for Writ of Certiorari to
The United States Court Of Appeals
For the District of Columbia Circuit

BRIEF OF *AMICUS CURIAE*
NATIONAL ASSOCIATION OF HOME
BUILDERS OF THE UNITED STATES IN
SUPPORT OF PETITIONERS

THOMAS J. WARD*
FELICIA K. WATSON
NATIONAL ASSOCIATION
OF HOME BUILDERS
OF THE UNITED STATES
1201 15th Street, N.W.
Washington, D.C. 20005
(202) 266-8200
tward@nahb.org
* *Counsel of Record*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, *Amicus* National Association of Home Builders of the United States (“NAHB”) states that it is a non-profit 501(c)(6) corporation incorporated in the State of Nevada, with its principal place of business in Washington, D.C. NAHB has no corporate parents or subsidiaries, and no publicly traded stock. No publicly traded company has a ten percent or greater ownership interest in NAHB.

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INTEREST OF *AMICUS CURIAE*¹

The National Association of Home Builders of the United States (“NAHB”) is a Washington, D.C.-based trade association whose mission is to enhance the climate for housing and the building industry. Chief among NAHB’s goals are providing and expanding opportunities for all people to have safe, decent, and affordable housing. Founded in 1942, NAHB is a federation of more than 600 state and local associations. About one-third of NAHB’s approximately 140,000 members are home builders or remodelers and build 80% of all homes constructed in the United States. The remaining members are associates working in closely related fields within the housing industry, such as mortgage finance and building products and services.

Building safe, decent, and affordable housing depends in large part upon stable and affordable supplies of a variety of building materials, including lumber. As part of its advocacy efforts, NAHB has adopted policy specifically addressing lumber supplies. NAHB’s *Forest Management Practices and Sustainable Lumber Supplies* policy provides that all branches of government (including judicial) should “adopt prudent policies that ensure the

¹ Counsel of record for all parties received notice at least 10 days prior to the due date of the *amicus curiae*’s intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

public lands remain available as a renewable resource in a healthy and sustainable manner.”² In addition, NAHB’s policy provides that the association work with “federal agencies charged with managing and overseeing the national forests to develop and maintain adequate timber sale volumes to meet domestic housing demands and sustainable yield goals.”³

NAHB is a vigilant advocate in the nation’s courts. It frequently participates as a party litigant and amicus curiae to safeguard the constitutional and statutory rights and business interests of its members and those similarly situated.

ARGUMENT

The supply and availability of lumber for businesses engaged in residential construction is critically important to an industry dependent on available building materials, including various species of lumber necessary to construct and remodel homes. Homeowners, buyers, and renters are already struggling with higher housing costs due in part to lack of supply, lack of developable land, material supply constraints, and other economic impediments.

² *Forest Management Practices and Sustainable Lumber Supplies*, NAHB Policy (June 17, 2017), <https://www.nahb.org/advocacy/nahb-policies/general-government-and-economic-policy/Forest-Management-Practices-and-Sustainable-Lumber-Supplies>.

³ *Id.*

Inadequate supplies of lumber and other building materials contribute to challenges in the home building industry. Turning large areas of productive timber land into “no touch” zones only exacerbate these challenges. Domestic lumber production is already inadequate to meet the required demand across all industries that rely on this material. Removing productive timberland from the production stream will create even further shortfalls in supplies.

For these reasons, NAHB asks the Court to grant the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit and the issues raised by the petitioners.

**I. DOMESTIC LUMBER PRODUCTION
CONSISTENTLY FAILS TO MEET
U.S. DEMAND**

The effect of the court’s decision in *American Forest Resource Council v. United States*, 77 F.4th 787 (D.C. Cir. 2023) means that the large swath of domestic timberland at issue in this case is no longer available for use in the U.S. economy. Consequently, eliminating the ability to sustainably harvest this timberland undermines the lumber supply chain and the ability of home builders to provide housing.

Fundamentally, the domestic lumber industry consistently fails to meet domestic demand. In order to create more affordable housing and unleash substantial economic potential, a comprehensive solution must include policies that increase domestic

production, not take away sustainable timber resources from the market.

In 2021, the United States produced 26.9 billion board feet of softwood lumber while consuming approximately 31.6 billion board feet.⁴ The United States does not produce domestically what it consumes, nor has it done so at any time in recent memory. Moreover, not all softwood lumber is the same, and the United States does not produce nearly enough of a particular species of softwood lumber, Spruce-Pine-Fir (“SPF”), which builders rely on for structural elements of a home, such as the framing.

In addition to production shortfalls, the U.S. timber industry regularly exports a portion of its domestic production. Of all domestically produced softwood lumber, 1.2 billion board feet was exported in 2021. Taking this into consideration, the domestic shortfall for 2021 was 14.6 billion board feet.⁵

NAHB forecasts that single-family housing starts for 2024 will rise to 1.04 million, which represents a 16.8% increase over starts in 2023. This translates to a rising demand for domestic lumber consumption. Given the already existing shortfall in domestic lumber production, the federal government’s decision to remove thousands of acres

⁴ U.S. Dep’t of Agriculture, *United States of America Forest Products Annual Market Review and Prospects: Country Market Report, 2019-2024*, 14 (Nov. 2022), <https://unece.org/sites/default/files/2022-12/united-states-of-america-country-market-statement-2022-final.pdf>.

⁵ *Id.* at 14-15.

from timber production in Oregon will only exacerbate supply shortages.

Compounding these issues is the fact that the United States continues to experience an unprecedented housing shortfall following the COVID-19 pandemic, with vacancy rates hitting their lowest readings in decades in 2021.⁶ Analyzing the 2021 American Community Survey (published by the U.S. Census Bureau), NAHB determined that owner vacancy rates dropped below 0.9% and rental vacancy rates reached a new low of 5.2%, the lowest levels recorded by the American Community Survey since it began generating this data in 2005.⁷ Consequently, NAHB estimates that 1.5 million units are required to close the gap for the structural housing deficit and bring the current vacancy rates back to the long-run equilibrium levels.⁸ This 1.5 million vacant units comprises 800,000 rental and 750,000 units for sale nationwide.⁹

Existing domestic lumber production is already insufficient to meet demand. Eliminating harvesting of the timberland at issue in this case will only serve to exacerbate the housing affordability and supply crisis.

⁶ Natalia Siniavskaia, *The Size of the Housing Shortage: 2021 Data*, NAHB Eye on Housing (Dec. 16, 2022), <https://eyeonhousing.org/2022/12/the-size-of-the-housing-shortage-2021-data/>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

II. LUMBER IS CRITICALLY IMPORTANT IN HOME BUILDING

Lumber accounts for a larger share of the cost of a home than any other building material. It is used for wood-frame residential construction and is common for interior and finishing purposes, such as windows and doors. NAHB research shows that, as of November 2023, lumber accounts for roughly \$23,500 of the cost of constructing a typical single-family home.¹⁰

The law of supply and demand illustrates that when supply decreases and demand is constant (or increases), prices increase. The lower court's decision allows the President to unilaterally lower lumber supply nationwide.

¹⁰ NAHB calculations based on data from the 2023 Builder Practices Survey, Home Innovation Research Labs (<https://www.homeinnovation.com/trends-and-reports/data/new-construction>); lumber prices from the Random Lengths Weekly Report (Nov. 17, 2023), <https://www.fastmarkets.com/forest-products/random-lengths-is-part-of-fastmarkets/>; SOI (Statistics of Income) Tax Stats - Corporation Income Tax Returns Complete Report (Publication 16), U.S. Internal Revenue Service, <https://www.irs.gov/statistics/soi-tax-stats-corporation-income-tax-returns-complete-report-publication-16> (manufacturers' mark-up based on the difference between receipts and cost of goods sold for the wood product manufacturing industry in 2020); and Annual Report for Wholesale Trade: 2021, U.S. Census Bureau <https://www.census.gov/data/tables/2021/econ/awts/annual-reports.html> (wholesalers' mark-up based on gross margin as a percent of sales).

Unfortunately, even modest price increases in the cost of lumber can deny many families in the United States an opportunity to achieve homeownership. NAHB has developed a “Priced-Out Study,”¹¹ which it updates annually, that analyzes the effect of how higher prices and interest rates affect housing affordability. Using 2023 estimates contained in the Priced-Out Study, 35.9 million of the 132.5 million U.S. households could afford to buy a new median priced home at \$425,786. However, an increase of \$1,000 in the home price will price 140,436 households out of the market for this home. These are the households that can qualify for a mortgage before a \$1,000 increase, but not afterwards.¹² Higher home prices create affordability challenges, particularly for first-time buyers.

Making homes more affordable, however, is not a purely charitable endeavor. Reducing the cost of lumber and, by extension, the price of the average single-family home adds fuel to the economy. For example, in 2023, reducing the price of the average new single-family home by \$1,000 would have generated \$912.99 million in additional single-family construction, \$459.4 million in wages and salaries, 7,041 full-time-equivalent (FTE) jobs, and an additional \$316.0 million in taxes and fees for federal, state, and local government. If the \$1,000

¹¹ Na Zhao, *NAHB Priced-Out Estimates for 2023*, NAHB Special Study for Housing Economics, March 2023 (“Priced-Out Model”) (<https://www.nahb.org/-/media/AAAB0EE545B24B4E8852C5EB075A60AC.ashx>).

¹² *Id.* at 2-3.

reduction (indexed to inflation) were to remain in place for five years, the effect is even more pronounced: \$5.259 billion in single-family construction, \$2.646 billion in wages and salaries, 39,180 FTE jobs, and \$1.820 billion in taxes and fees for various levels of government.¹³

Rising mortgage rates, elevated construction costs and limited existing inventory have recently pushed housing affordability to its lowest level in more than a decade.¹⁴ Given the acknowledged housing affordability crisis¹⁵ extant in the U.S., NAHB and its members are concerned that allowing the President to unilaterally make productive timber areas “no touch” zones could worsen the current crisis.

¹³ Based on NAHB’s long-term housing forecast, a price elasticity of demand of -1, and NAHB’s study on the economic impact of residential construction on the U.S. economy. Paul Emrath, *National Impact on Home Building and Remodeling: Updated Estimates*, Special Study for HousingEconomics.com (Apr. 1, 2020), <https://www.nahb.org/-/media/76398F7E13C547FDA99AD5FD35DA695C.ashx>.

¹⁴ Rose Quint, *Rising Mortgage Rates Push Housing Affordability to Lowest Level in Index History*, NAHB Eye on Housing (Nov. 9, 2023) <https://eyeonhousing.org/2023/11/rising-mortgage-rates-push-housing-affordability-to-lowest-level-in-index-history/>.

¹⁵ Jennifer Sor, *Housing has Become so Unaffordable that Over 75% of Homes on the Market are too Expensive for Middle-Income Buyers*, Business Insider, June 12, 2023 <https://markets.businessinsider.com/news/commodities/housing-affordability-crisis-shortage-inventory-high-mortgage-rates-middle-class-2023-6>.

CONCLUSION

Due to the impact the Circuit Court's decision could have on lumber production and the housing industry, NAHB respectfully requests that the petition for a writ of certiorari be granted.

Dated: December 15, 2023

THOMAS J. WARD*
FELICIA K. WATSON
NATIONAL ASSOCIATION
OF HOME BUILDERS
OF THE UNITED STATES
1201 15th Street, N.W.
Washington, D.C. 20005
(202) 266-8200
tward@nahb.org
* *Counsel of Record*