

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**NATIONAL ORGANIZATION OF VETERANS'
ADVOCATES, INC.,**
Petitioner

v.

SECRETARY OF VETERANS AFFAIRS,
Respondent

2020-1321

Petition for review pursuant to 38 U.S.C. Section 502.

PER CURIAM.

O R D E R

The parties are requested to file supplemental briefs before oral argument addressing the following questions related to National Organization of Veterans' Advocates' (NOVA) Article III standing:

- (1) Are the allegations of the Petition sufficient to establish standing, even without any evidence from NOVA, given that the Secretary does not challenge standing, or must NOVA submit evidence to establish Article III standing, *see Phigenix, Inc. v. Immunogen, Inc.*, 845 F.3d 1168, 1171–73 (Fed. Cir.

2017); *Shrimpers & Fishermen of RGV v. Texas Commission on Environmental Quality*, 968 F.3d 419, 423–24 (5th Cir. 2020) (citing cases from six other circuits)?

- (2) Is there evidence that, at the time of the Petition, NOVA had members with standing to challenge the provisions at issue?
- (3) Does NOVA have standing on any basis apart from having had members who would have had standing to challenge the provisions at issue?

IT IS ORDERED THAT:

Each party shall submit a brief, not to exceed 15 pages, along with any evidence (not subject to the page limit), in accordance with this Order. NOVA's filing is due by 5:00 p.m. on September 22, 2020. The Secretary's responsive filing is due by 5:00 p.m. on September 29, 2020. NOVA may submit a reply brief, not to exceed 5 pages, by 5:00 p.m. on October 2, 2020.

If NOVA chooses to make evidentiary submissions, for example, in the form of a declaration, the court will deem the submissions to be timely.

The court requires 24 paper copies of the supplemental briefs provided by the filer within 2 business days from the date of electronic filing of the document. Administrative Order No. 20-01 does not exempt the filing of these paper copies.

FOR THE COURT

September 15, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court