

ORAL ARGUMENT NOT YET SCHEDULED
No. 14-5319

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE KELLOGG BROWN & ROOT, INC., ET AL.,

Petitioner.

On Petition for a Writ of Mandamus to the United States District Court
for the District of Columbia, No. 1:05-CV-1276

REPLY IN SUPPORT OF MOTION
FOR LEAVE TO FILE A BRIEF AMICI CURIAE

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February 18, 2015

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Respondent asserts that the Court must reject amici's brief as categorically untimely. That is incorrect. Amici sought, and this Court has discretion to grant, leave to file outside of the typical seven-day window for amicus briefs. Such leave is warranted by the circumstances of this case.

1. Federal Rule of Appellate Procedure 29(e), which governs the time for filing amicus briefs, specifically provides that “[a] court may grant leave for later filing.” Fed. R. App. P. 29(e); *see also* Amici's Motion for Leave to File 1 (seeking leave to file pursuant to Rule 29(e)). Under Rule 29, the Court has discretion to accept amici's brief if it would assist the Court in its consideration of this case.

2. Leave is appropriate here. As amici noted in their Motion for Leave to File (at 5), Circuit Rule 29(d) requires “[a]mici curiae on the same side” to “join in a single brief to the extent practicable.” Obtaining consensus among six amici, which represent industries with diverse compliance practices, requires coordination and consultation. That inevitably takes time.

Amici also note that this is not a typical appeal, in which amici have advance warning of when the appellant's brief will arrive and trigger Rule 29(e)'s “clock” for top-side amici. The petition was filed and the case docketed on December 19, six days before Christmas. Citing holiday-season travel plans and familial obligations, Respondent sought and received a 30-day extension of the time to file

his response, until February 6. Amici, with the same “starting gun” and facing the same holiday-season constraints, filed their brief seven days before that. Given the difficulty of joining six diverse organizations in a single brief, amici proceeded reasonably.

3. Nor has Respondent been prejudiced by amici’s filing. Amici conferred with counsel for Respondent and alerted counsel to the forthcoming brief eight days before the brief and motion were filed. Respondent received the amicus brief a week before his response to the petition was due.

However, to eliminate any possible prejudice concerns, amici would not oppose Respondent’s request to file a response to the amicus brief, should the Court find that a response would aid its consideration.

Respectfully submitted.

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February 18, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2015, a true and correct copy of the foregoing Reply of the Chamber of Commerce of the United States of America, the National Association of Manufacturers, the Association of Corporate Counsel, the American Forest & Paper Association, the Pharmaceutical Research and Manufacturers of America, and the Coalition for Government Procurement in Support of the Motion for Leave to File a Brief Amici Curiae was filed with the Clerk of the United States Court of Appeals for the D.C. Circuit via the Court's CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Elisebeth Collins Cook
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