

No. 07-12398-DD & 07-13061-DD

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

JANICE MORGAN AND BARBARA RICHARDSON, ET AL.,
Appellees,

v.

FAMILY DOLLAR STORES, INC.,
Appellant.

**On Appeal from the United States District Court
for the Northern District of Alabama
Case Nos. 7:01-cv-0303-UWC**

**MOTION OF THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA
FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*
IN SUPPORT OF APPELLANT
FOR REVERSAL OF THE DISTRICT COURT DECISION**

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No. 07-12398-DD & 07-13061-DD
Morgan v. Family Dollar Stores, Inc.

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1-1, in addition to the parties and entities identified in the Certificate of Interested Persons and Corporate Disclosure Statement of the Defendants-Appellants, which is hereby incorporated by reference into this Certificate, the Chamber of Commerce of the United States of America submits that the following persons and entities have an interest in the outcome of this matter:

Amicus Curiae:

Chamber of Commerce of the United States of America

Counsel for *Amicus Curiae:*

JONES DAY,

Dorfman, Victoria

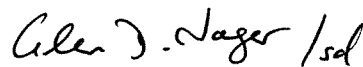
Nager, Glen D.

NATIONAL CHAMBER LITIGATION CENTER, INC.,

Brennan, Shane

Conrad, Robin S.

Dated: August 6, 2007



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Pursuant to Federal Rule of Appellate Procedure 29 (“FRAP 29”), *Amicus Curiae*, the Chamber of Commerce of the United States of America (“the Chamber”), respectfully petitions this Court for leave to file a brief *amicus curiae* in the above captioned matter.¹

As set forth below, the Chamber has satisfied the requirements of FRAP 29. As then-Judge Alito explained, under FRAP 29, where a party withholds its consent, a motion for leave to file an *amicus* brief must satisfy three elements: (a) an adequate interest; (b) desirability; and (c) relevance. *See Neonatology Assocs., P.A. v. Comm’r of Internal Revenue*, 293 F.3d 128, 129, 131, 133 (3d Cir. 2002) (Alito, J.) (granting, despite one party’s opposition, motion for leave to file *amicus* brief and noting generally the benefits of *amicus curiae* briefs). Judge Alito further emphasized that “it is preferable to err on the side of granting leave” because a restrictive policy may “create . . . the perception of viewpoint

¹ Appellant has consented to the filing of the brief *amicus curiae*. Appellees have withheld their consent to file the brief *amicus curiae*, which necessitates the filing a motion for leave.

discrimination” and may “convey an unfortunate message about the openness of the court.” *Id.* at 133.

Here, the Chamber satisfies these three requirements and presents arguments and considerations that are not the principal focus of the briefs of either party and that will be of aid to the Court in deciding this case. *See id.* (“[I]f a good brief is rejected, the merits panel will be deprived of a resource that might have been of assistance.”).

1. **“An Adequate Interest.”** The Chamber has a more than adequate interest in the present case, as the world’s largest business federation. It represents an underlying membership of more than three million businesses, state and local Chambers of Commerce, and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber has more than 100 American Chambers of Commerce in 91 countries.

The Chamber’s members are directly engaged in implementing the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (2007) (“FLSA”), its Portal-to-Portal Act amendments, 29 U.S.C. §§ 251-262 (2007) (“Portal Act” or “Act”), and are regularly adjusting their operations to conform with administrative and judicial interpretations of these statutes. The proper disposition of this case will have significant implications for the Chamber’s members across the country.

The Chamber advocates the interests of the business community in courts across the nation by filing *amicus curiae* briefs in cases involving issues of national concern to American businesses. For instance, the Chamber has filed *amicus curiae* briefs with this Court in *Glover v. Liggett Group, Inc.*, 459 F.3d 1304 (11th Cir. 2006), *Action Marine, Inc. v. Continental Carbon, Inc.*, 481 F.3d 1302 (11th Cir. 2007), *McClain v. Metabolife International, Inc.*, 401 F.3d 1233 (11th Cir. 2005), and *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359 (11th Cir. 2005). The Chamber also regularly files *amicus curiae* briefs in the Supreme Court. *See, e.g., BCI Coca-Cola Bottling Co. v. EEOC*, 127 S. Ct. 1931 (2007) (mem.) (dismissing certiorari) (framework set forth in the Chamber’s *amicus* brief in support of Petitioner largely adopted by the Solicitor General, the Respondent’s representative; *see* Respondent’s Br. at 23); *Texaco, Inc. v. Dagher*, 545 U.S. 1138 (2005) (mem.) (granting the Chamber leave to file *amicus* brief); *BASF Corp. v. Peterson*, 127 S. Ct. 579 (2006) (mem.) (same).

The Chamber has already expended considerable resources in preparing its brief in the present matter. The Chamber respectfully asks permission to provide this Court with the benefit of its perspective and the experience of its members in dealing with wage-hour issues, as it has done before.

2. “Desirability.” The Chamber has also met the requirement of desirability under FRAP 29(b)(2), which “is open-ended, but a broad reading is

prudent.” *Neonatology Assocs.*, 293 F.3d at 132. As then-Judge Alito explained, the types of *amicus* briefs that may be of assistance to courts include those which “collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group.” *Id.* (quoting Luther T. Munford, *When Does the Curiae Need an Amicus?*, 1 J. App. Prac. & Process 279 (1999)).

The Chamber’s brief is the paradigmatic example of an *amicus* brief that is helpful to the court because it combines all of the elements, identified by *Neonatology Associates*, which deemed each, by itself, sufficient to grant leave to file an *amicus* brief. First, the Chamber provides extensive factual and background information on the rise of FLSA collective actions. Second, the Chamber is unquestionably a body with expertise in employment matters, as has been recognized by numerous courts in granting the Chamber leave to file *amicus* briefs in similar cases. Third, the Chamber’s brief includes an analysis of the legislative and enactment history of the Portal Act and judicial acceptance of the legislators’ policy goals. *See, e.g., In re Paschen*, 296 F.3d 1203, 1209 (11th Cir. 2002) (quoting *amicus* brief on legislative history in a statutory interpretation case); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1116 n.19 (9th Cir. 2002)

(quoting *amicus* brief on the enactment history of a rule). The brief also includes an extensive discussion of the district court's analysis of fairness of certifying the class in this case in light of the judicial interpretation of fairness in a related body of law – class action Rule 23 cases. *See, e.g., Thompson v. County of Franklin*, 314 F.3d 79, 97 (2d Cir. 2002) (Sack, J., dissenting) (recognizing *amicus* argument regarding the bearing of another body of law on the question before the court). Fourth, the brief highlights important policy considerations and negative effects the district court's ruling would have on business incentives for national businesses with the network of stores. *See, e.g., Turtle Island Restoration Network v. Evans*, 299 F.3d 1373, 1376 n.2 (Fed. Cir. 2002) (Gajarsa, J., dissenting from denial of rehearing en banc) (quoting *amicus* brief to emphasize competitive disadvantages of adopted rule).

3. “Relevance.” On the requirement of relevance, the Chamber's membership reflects the vast majority of major U.S. employers and human resource professionals who are directly affected by federal wage-hour regulations. They offer a special perspective on the issues in this case and believe that the arguments and policy considerations raised in their brief will aid this Court in its disposition of this case.

As stated by Judge Alito in *Neonatology Associates*, 293 F.3d at 133, “a restrictive practice regarding motions for leave to file seems to be an unpromising

strategy for lightening a court's work load [A] court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet [FRAP] 29's criteria as broadly interpreted." The Chamber desires a voice in this litigation, the outcome of which directly affects the Chamber and its membership, and the working public at large. As this Court is aware, its decision could have far-reaching effects in the workplace, making it a case of considerable public interest. We urge this Court to grant the Chamber the opportunity to present a series of issues and concerns of the Chamber and the public that are not sufficiently addressed in the parties' briefs.

Thus, the Chamber respectfully petitions this Court to grant leave to file its *amicus curiae* brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 6, 2007, I caused copies of the foregoing Motion of the Chamber of Commerce of the United States of America for Leave to File Brief *Amicus Curiae* in Support of Appellant For Reversal of the District Court Decision to be served by Federal Express, overnight delivery on the following counsel:

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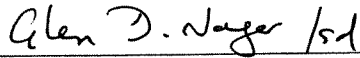
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