

No. 10-56014

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STEVE HARRIS, *et al.*,
Plaintiffs – Appellants,

v.

AMGEN, INC., *et al.*,
Defendants – Appellees.

On Appeal from the United States District Court
for the Central District of California
No. CV 07-05442-PSG
The Honorable Philip S. Gutierrez

**APPELLANTS' RESPONSE TO MOTION OF AMERICAN
BENEFITS COUNSEL AND THE CHAMBER OF
COMMERCE OF THE UNITED STATES OF AMERICA TO
FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITION
FOR PANEL REHEARING OR REHEARING *EN BANC***

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I. INTRODUCTION

On June 18, 2013, Appellees herein filed a Petition for Panel Rehearing or Rehearing *En Banc* (“Appellees’ Petition”). By Order dated June 26, 2013, the Court directed Appellants to submit a response to Appellees’ Petition by July 17, 2013.

On June 28, 2013, a motion was filed by The American Benefits Counsel and the Chamber of Commerce of the United States of America (“ABC/COC”) for permission to file an *amicus* brief in support of Appellees’ Petition. Under Rule 27(3) of the Federal Rules of Appellate Procedure (“Fed. R. App. P.”), a response to the motion of ABC/COC is due on July 11, 2013.

II. ARGUMENT

[J]udges should be assiduous to bar the gates to *amicus curiae* briefs that fail to present convincing reasons why the parties’ briefs do not give [them] all the help [they] need for deciding the appeal.

Ryan v. Commodity Futures Trading Comm’n, 125 F.3d 1062, 1064 (7th Cir. 1997). Here, ABC/COC fail to present any “*convincing reasons*” to warrant their entrance into this appeal. Specifically, the

Court should deny ABC/COC's barebones motion for the following three reasons.

First, ABC/COC lack a tangible interest within the meaning of Fed. R. App. P. 29(b)(1) in serving as *amici curiae* in this appeal. ABC/COC do not claim that the outcome of this appeal will directly affect any of their members. Nor can ABC/COC manufacture an "interest" – rising to the level of the requisite "legal significance" of an *amicus curiae* – based on their participation as *amici* in other unrelated appeals.

A theoretical interest is insufficient to warrant entry into this appeal. *See Ryan*, 125 F.3d at 1063 (stating that an *amicus* brief may be allowed "when the *amicus* has an interest in some other case that may be affected by ... the present case"). Nor can ABC/COC's purported interests rise to the level of the "legal significance" requisite for their status as *amici* under Fed. R. App. P. 29(b)(1). *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003). Thus, the Court should deny ABC/COC's motion.

Second, ABC/COC fail to demonstrate a reason under Fed. R. App. P. 26(b)(2) to file an *amici* brief here. In fact, ABC/COC's proposed brief merely duplicates the arguments that Appellees have already made in support of rehearing.

“*Amicus* briefs are not properly used to reiterate arguments and perspectives already before the Court” because “the utility of those briefs is minimal.” *Mobile Cnty. Water, Sewer and Fire Pmt. Auth., Inc. v. Mobile Area Water and Sewer Sys., Inc.*, 567 F. Supp. 2d 1342, 1344 n.1 (S.D. Ala. 2008) (citation omitted). Indeed, “[t]he vast majority of *amicus curiae* briefs are filed by allies of litigants and duplicate the arguments made in the litigants’ briefs, in effect merely extending the length of the litigant’s brief.” *Ryan*, 125 F.3d at 1063.

Third, Appellees have actively represented, and will continue to represent, any purported interests ABC/COC claim to have. There is nothing “novel or particularly complex” about the issues raised by Appellees in their petition. *See* 9th Cir. R. 29-2, Cir. adv. comm. n. No good reason exists therefore to allow ABC/COC to burden the Court with another brief in this soon-to-be exhaustively-briefed

appeal. *See Ryan*, 125 F.3d at 1064 (holding that an *amicus* brief may be filed only if it informs the court of “a material consideration” that is otherwise unknown to the court). Moreover, ABC/COC’s views, even if pertinent to this appeal, “can ... be conveyed by a letter or affidavit more concisely and authoritatively than by a brief.” *Voices for Choices*, 339 F.3d at 545. Accordingly, the Court should deny ABC/COC’s motion to file a brief as *amici curiae*.

III. CONCLUSION

In sum, because the purported interests of ABC/COC are being fully and adequately represented by Appellees, and because ABC/COC present no issues in their *amici* brief that are not being presented by Appellees, there is no good reason to burden this Court with yet another brief.

In any event, if the motion of ABC/COC is granted, Appellants’ response to Appellees’ Petition will also serve as a response to the repetitive *amici* brief of ABC/COC.

DATED: July 11, 2013

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CERTIFICATE OF COMPLIANCE

1. This response to a motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because the response does not exceed 20 pages, excluding the pages of the brief exempted by Fed. R. App. P. 27(d)(2).

2. This response to a motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2002 in Times New Roman type style, 14-point font.

DATED: July 11, 2013

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9th Circuit Case Number(s) 10-56014

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