

No. 12-2236

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

HENRY RUPPEL

Plaintiff-Appellant,

v.

CBS CORPORATION, et al.

Defendants-Appellees.

**MOTION OF CHAMBER OF COMMERCE OF THE UNITED STATES
OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN
SUPPORT OF DEFENDANT-APPELLANT AND REVERSAL**

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FED. R. APP. P. AND CIRCUIT RULE 26.1
DISCLOSURE STATEMENT

The undersigned, counsel of record for *amicus* Chamber of Commerce of the United States of America,¹ hereby furnishes the following information in accordance with Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules of the United States Court of Appeals for the Seventh Circuit:

(1) The full name of every party or *amicus* the attorney represents:

Chamber of Commerce of the United States of America.

(2) If such party or *amicus* is a corporation:

(i) Its parent corporation, if any:

None. Chamber of Commerce of the United States of America has no parent corporations.

(ii) A list of stockholders that are publicly held companies owning 10% or more of stock in the party:

None. No publicly held company has any ownership interest in Chamber of Commerce of the United States of America.

(3) The names of all law firms whose partners or associates have appeared for the party or *amicus* in the case or are expected to appear for the party in this Court:

¹ Disclosures for each counsel for *Amicus Curiae* are included in the proposed brief.

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National Chamber Litigation Center, Inc.

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

Pursuant to Federal Rule of Appellate Procedure 29(b), the Chamber of Commerce of the United States of America (the “Chamber”) respectfully requests leave to file the accompanying Brief as *Amicus Curiae* in Support of Defendant-Appellant CBS Corporation (“Defendant-Appellant”). The Chamber urges reversal of the order of the U.S. District Court for the Southern District of Illinois remanding this case to state court based on the District Court’s conclusion that removal was not proper under the federal officer removal statute, 28 U.S.C. section 1442(a)(1).

The Chamber is the world’s largest business federation. The Chamber represents 300,000 direct members and indirectly represents an underlying membership of three million professional organizations of every size, in every industry sector, and from every region of the country. A central function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation’s business community. The Chamber has filed *amicus* briefs for over three decades in courts throughout the country. The Chamber’s briefs have

been described as “helpful” and “influential” by courts² and commentators.³

Many of the Chamber’s members serve as federal contractors, performing vital functions for the United States in the areas of national defense, law enforcement, healthcare, agriculture, transportation, and virtually all other areas in which federal power is exercised. In carrying out these functions, Chamber members frequently subject themselves to substantial potential tort liability related to goods manufactured at the request, and according to exacting specifications, of the United States. Accordingly, the Chamber’s members have a strong interest in this case to ensure proper application of the federal officer removal statute to permit removal where Congress has authorized it for those “acting under” an officer or agent of the United States. As the United States Supreme Court has repeatedly held, the federal officer removal statute serves to ensure the litigation of federal defenses and immunities—which are available to federal contractors in specified circumstances—in a federal forum. The Chamber submits its brief as *amicus curiae* to ensure proper application of these

² See, e.g., *Kedy v. A.W. Chesterton Co.*, 946 A.2d 1171, 1179 n.8 (R.I. 2008); *Scott v. Cingular Wireless*, 161 P.3d 1000, 1004 (Wash. 2007).

³ David L. Franklin, *What Kind of Business-Friendly Court? Explaining the Chamber of Commerce’s Success at the Roberts Court*, 49 Santa Clara L. Rev. 1019, 1026 (2009); see also *id.* (quoting Supreme Court practitioner Carter Phillips: “The briefs filed by the Chamber in that Court and in the lower courts are uniformly excellent. They explain precisely why the issue is important to business interests. . . . Except for the Solicitor General representing the United States, no single entity has more influence on what cases the Supreme Court decides and how it decides them than the [Chamber.]”).

important principles on behalf of its many members operating in the federal sphere.

The Chamber's *amicus* brief will help inform the Court's resolution of this appeal for two primary reasons. First, the proposed *amicus* brief provides a "unique perspective" that "can assist the court of appeals beyond what the parties are able to do," *Nat'l Org. for Women v. Scheidler*, 223 F.3d 615, 617 (7th Cir. 2000) (citing *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997)), by addressing, from the perspective of an organization representing a wide variety of federal contractors, the broad policy considerations that should inform application of the statute to federal contractors. Then-circuit judge Samuel Alito cogently explained the reasons why *amicus* briefs providing a unique perspective can benefit the appellate process:

Even when a party is very well represented, an amicus may provide important assistance to the court. "Some amicus briefs 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." Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J. App. Prac. & Process 279 (1999). . . .

The criterion of desirability set out in Rule 29(b)(2) is open-ended, but a broad reading is prudent. . . . If an amicus brief that turns out to be unhelpful is filed, the merits panel, after studying the case, will often be able to make that determination without much

trouble and can then simply disregard the amicus brief. On the other hand, if a good brief is rejected, the merits panel will be deprived of a resource that might have been of assistance.

A restrictive policy with respect to granting leave to file may also create at least the perception of viewpoint discrimination. Unless a court follows a policy of either granting or denying motions for leave to file in virtually all cases, instances of seemingly disparate treatment are predictable. A restrictive policy may also convey an unfortunate message about the openness of the court.

Neonatology Assocs., P.A. v. Comm’r of Internal Revenue, 293 F.3d 128, 132-33 (3d Cir. 2002) (Alito, J.), *aff’d*, 299 F.3d 221 (3d Cir. 2002). The considerations identified by Justice Alito strongly support admission of the Chamber’s brief.

Second, the Chamber’s proposed brief provides a substantially more detailed discussion of the history of the federal officer removal statute and its construction and application by the Supreme Court than can be found in Defendant-Appellant’s necessarily more procedurally- and factually-focused brief. In particular, the Chamber’s *amicus* brief provides a detailed exposition of the history, both judicial and legislative, of the federal officer removal statute to show the error in the district court’s application of an anti-removal presumption in this case. Thus, the Chamber’s proposed *amicus* brief focuses principally on matters “that are not to be found in the parties’ briefs.” *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (Posner, J., in chambers). The Chamber’s proposed brief avoids duplication, instead

providing an in-depth analysis of legal principles “the parties for one reason or another have not [fully] brought to [this Court’s] attention,” *Ryan*, 125 F.3d at 1064, or “have not adequately developed,” *Sierra Club, Inc. v. Env’tl. Prot. Agency*, 358 F.3d 516, 518 (7th Cir. 2004). The more extensive discussion of the history and proper application of the federal officer removal statute in the proposed brief, therefore, will assist the Court by providing it with “information . . . beyond what the parties [have provided].” *Nat’l Org. for Women*, 223 F.3d at 617.

CONCLUSION

For the foregoing reasons, the motion for leave to file a brief as *amicus curiae* should be granted. If such relief is granted, the Chamber requests that the accompanying brief be considered filed as of the date of this Motion’s filing.

Dated: July 23, 2012

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of July, 2012, I caused the foregoing Motion of Chamber of Commerce of the United States of America for Leave to File Brief as *Amicus Curiae* in Support of Defendant-Appellant and Reversal to be served on the following via the Electronic Case Filing (ECF) service:

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