

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

Guadalupe L. GARCIA, et al.,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	Case No. 04-5448
)	
Ann M. VENEMAN, Secretary of the)	
United States Department of)	
Agriculture,)	
)	
Defendant-Appellee.)	
)	

MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE

Pursuant to Circuit Rule 29(b), the Chamber of Commerce of the United States (“the Chamber”) hereby requests leave from this Court to participate as amicus curiae in support of Appellee, Ann Veneman, urging affirmance of the district court’s denial of class certification in this case.

1. The Chamber is the world’s largest business federation, representing an underlying membership of over three million businesses and organizations. A principal function of the Chamber is to represent the interests of its members by filing amicus briefs in cases involving issues of vital concern to the nation’s business community. The Chamber seeks to assist this Court by highlighting the significance of the instant appeal to employers (particularly private-sector employers) and the impact the Court’s decision may have beyond the immediate concerns of the parties to this case.

2. The instant appeal raises significant and recurring questions about the propriety of class certification in discrimination cases. These issues include the weight that courts should give to the extent of organizational and geographic dispersal of decisionmakers; the propriety of certifying a class where the challenged practice contains both subjective and objective factors; and the appropriateness of provisionally certifying a class under Rule 23(b)(2) for liability purposes while leaving open the question of (b)(2) or (b)(3) certification for remedial proceedings. Given the potential exposure to liability resulting from certification of large classes in discrimination cases, and the pressure to settle such cases independently of the merits of the plaintiffs' claims, the members of the Chamber have a substantial interest in the standards courts apply to motions for class certification. Because of its experience with these issues, the Chamber is well situated to brief the Court on the underlying class certification questions in this case and the concerns they raise for the business community.

3. This case was docketed in this Court on December 30, 2004. Pursuant to Circuit Rule 29(b), this motion is filed within 60 days of that date.

4. The Chamber is prepared to file its brief within the time allowed by Federal Rule of Appellate Procedure 29(e).

5. Counsel for the Government has consented to the Chamber's filing of an amicus brief in this case. Counsel for Appellants has refused to consent.

WHEREFORE, the Chamber respectfully requests leave from this Court to participate as amicus curiae in this case.

Dated: February 28, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Glen D. Nager", written over a horizontal line.

Glen D. Nager
Shay Dvoretzky
Jones Day
51 Louisiana Ave N.W.
Washington D.C. 20001
(202) 879-3939 (Telephone)
(202) 626-1700 (Fax)

*Counsel for Amicus Curiae
United States Chamber of Commerce*

DISCLOSURE STATEMENT PURSUANT TO CIRCUIT RULE 26.1

The Chamber of Commerce of the United States is a trade association organized for the general purpose of promoting the commercial and legislative interests of its members. The Chamber does not have any outstanding securities in the hands of the public, and has no parent companies, subsidiaries, or affiliates.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of February, 2005, a copy of the foregoing Motion to Participate as Amicus Curiae was sent by first-class mail to each of the following:

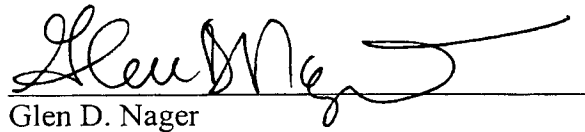
Alan M. Wiseman
Stephen S. Hill
Howrey Simon Arnold & White
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402

Counsel for Plaintiffs-Appellants Guadalupe L. Garcia, et al.

Robert M. Loeb
Charles W. Scarborough
United States Department of Justice
Civil Division, Appellate
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Peter D. Keisler
United States Department of Justice
Office of the Deputy Attorney General
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Counsel for Appellee Ann M. Veneman


Glen D. Nager