

Case No. 12-2484

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

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

*Plaintiff-Appellant,*

v.

FORD MOTOR COMPANY,

*Defendant-Appellee.*

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On Appeal from the United States District Court  
for the Eastern District of Michigan Southern Division  
Case No. 5:11-cv-13742-JCO-MAR

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**UNOPPOSED MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF  
AMICUS CURIAE OF THE CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA, KENTUCKY CHAMBER OF  
COMMERCE, MICHIGAN CHAMBER OF COMMERCE, OHIO  
CHAMBER OF COMMERCE, AND TENNESSEE CHAMBER OF  
COMMERCE AND INDUSTRY IN SUPPORT OF DEFENDANT-  
APPELLEE**

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Dated: October 29, 2014

*Counsel for Amici Curiae*

**Disclosure of Corporate Affiliations and Financial Interest**

Sixth Circuit

Case Number: 12-2484 Case Name: EEOC v. Ford Motor Co.

Name of counsel: William S. Consovoy

Pursuant to 6th Cir. R. 26.1, the Chamber of Commerce of the United States of America, the Kentucky Chamber of Commerce, Michigan Chamber of Commerce, Ohio Chamber of Commerce, and Tennessee Chamber of Commerce and Industry, collectively, make the following disclosures:

1. Are said parties a subsidiary or affiliate of a publicly owned corporation? No.
2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? No.

**CERTIFICATE OF SERVICE**

I certify that on October 29, 2014 the foregoing document was filed with the Clerk of the Court. The Court's ECF system will send notification to all parties in the appeal.

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To the Honorable Judges of the United States Court of Appeals for the Sixth Circuit:

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, the Chamber of Commerce of the United States of America, the Kentucky Chamber of Commerce, the Michigan Chamber of Commerce, the Ohio Chamber of Commerce, and the Tennessee Chamber of Commerce and Industry respectfully request leave to file the accompanying supplemental brief as *amici curiae* in support of Defendant-Appellee.

The Chamber of Commerce of the United States of America (“the Chamber”) is the world’s largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry, from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. The Chamber thus regularly files *amicus curiae* briefs in cases raising issues of concern to the Nation’s business community.

The Kentucky Chamber of Commerce is a business trade organization located in Frankfort, Kentucky. It represents the interests of over 90,000 Kentucky businesses.

The Michigan Chamber of Commerce (“Michigan Chamber”) is a nonprofit corporation representing over 7,000 members, all of whom are private enterprises engaged in an array of civic, professional, commercial, industrial, and agricultural activity in Michigan. Since its founding in 1959, the Michigan Chamber has sought to engage decision makers at all levels of government with the hope that the continual development of law and public policy will keep Michigan economically competitive and make the State attractive as a place to live and work.

The Ohio Chamber of Commerce (“Ohio Chamber”), founded in 1893, is Ohio’s largest and most diverse statewide business advocacy organization. The Ohio Chamber works to promote and protect the interests of its 6,000 members and the thousands of Ohioans they employ while building a more favorable business climate. The advocacy efforts of the Ohio Chamber are dedicated to the creation of a strong pro-jobs environment—an Ohio business climate responsive to expansion and growth.

The Tennessee Chamber of Commerce and Industry is the state chamber of commerce and is the Tennessee Manufacturers’ Association, representing all facets of business and industry across the State. Formed in 1912, it is one of Tennessee’s oldest and most respected business organizations dedicated to ensuring a positive business and regulatory climate.

*Amici* have a direct interest in this important case concerning the ability of their member companies to establish basic workplace attendance policies. The Chambers' members are subject to the Americans with Disabilities Act (“ADA”) and its implementing regulations, as well as the similar obligations imposed on federal government contractors and subcontractors under Section 503 of the Rehabilitation Act. The Chambers therefore have a strong interest in ensuring that these statutes are interpreted to allow their members to decide for themselves what job functions, including predictable workplace attendance, are essential to their business operations.

The proposed *amicus* brief discusses the need to interpret the ADA in a manner that allows employers to exercise their business judgment as to whether an employee's regular attendance in the workplace is an essential function for most jobs. The proposed *amicus* brief also discusses the significant problems—both legal and practical—that arise when the employer's business judgment as to the essential functions of a particular job is second-guessed by judges, employees, or juries in litigation. As the proposed *amicus* brief explains, this is not an issue that can be contested case-by-case.

Counsel for Defendant-Appellee Ford Motor Company and Counsel for Plaintiff-Appellant Equal Employment Opportunity Commission have consented to the filing of the *amicus* brief.

WHEREFORE, the Chamber of Commerce of the United States of America, the Kentucky Chamber of Commerce, the Michigan Chamber of Commerce, the Ohio Chamber of Commerce, and the Tennessee Chamber of Commerce and Industry, respectfully request that the Court grant them leave to file the accompanying supplemental *amicus* brief in support of Defendant-Appellee.

Respectfully submitted,

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*Counsel for Amici Curiae*

Dated: October 29, 2014

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of October, 2014, a true and correct copy of the Unopposed Motion for Leave to File Supplemental Brief of the Chamber Of Commerce of the United States of America, Kentucky Chamber of Commerce, Michigan Chamber of Commerce, Ohio Chamber of Commerce, and Tennessee Chamber of Commerce and Industry as *Amici Curiae* in Support of Defendant-Appellee was filed with the Clerk of the United States Court of Appeals for the Sixth Circuit via the email address of Beverly\_Harris@ca6.uscourts.gov. The Court will send notice of such filing to all counsel who are registered CM/ECF users.

*s/ William S. Consovoy*

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