

ORAL ARGUMENT SCHEDULED FOR FEBRUARY 3, 2017UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUITPRICE-SIMMS, INC., doing business as
Toyota Sunnyvale,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Nos. 15-1457, 16-1010

**UNOPPOSED MOTION OF *AMICUS CURIAE* THE CHAMBER OF
COMMERCE OF THE UNITED STATES OF AMERICA FOR
LEAVE TO PARTICIPATE IN ORAL ARGUMENT**

Pursuant to Circuit Rule 34(e), The Chamber of Commerce of the United States of America respectfully moves for leave to participate in oral argument in this matter as *amicus curiae* supporting petitioner Price-Simms, Inc. This motion has been timely filed more than 14 days prior to the date oral argument is scheduled.

As required by Circuit Rule 34(e), petitioner has consented to the Chamber's participation in oral argument, subject to the limitation on the number of counsel specified in Circuit Rule 34(c), and it has agreed to cede a portion of its argument time to the Chamber. Respondent National Labor Relations Board does not oppose this motion.

1. This case presents, among other issues, the important and frequently recurring question whether the National Labor Relations Act creates an exception to the strong federal policy, articulated by Congress in the Federal Arbitration Act (“FAA”), that arbitration agreements must be enforced as written.

Many of the Chamber’s members regularly use arbitration agreements in contracts with their employees because arbitration allows them to resolve disputes promptly and efficiently, while avoiding the costs associated with traditional litigation. As the Chamber discussed in its *amicus* brief, the Board erred here by relying on its *D.R. Horton* rule and concluding that respondent’s agreement with its employees to arbitrate disputes on an individual basis was an unfair labor practice, notwithstanding the FAA’s mandate. A ruling from this Court enforcing the Board’s decision and order would deprive many businesses and their employees of the benefits of arbitration. The Chamber therefore has a strong interest in explaining why the Board’s decision was wrong.

2. The Chamber’s participation in oral argument will benefit the Court and aid it in resolving this case. Representing the interests of the nation’s business community in judicial proceedings is one of the Chamber’s chief functions. Accordingly, the Chamber filed a brief as an

amicus curiae in this case, with the consent of the parties; and more generally, the Chamber frequently appears as an *amicus curiae* in cases like this one that involve the proper interpretation of the FAA or other issues of vital concern to the Chamber's members. The Chamber possesses deep, concrete knowledge of the use and workings of arbitration agreements, as well as substantial, long-standing experience analyzing legal issues like the ones presented here.

3. What is more, counsel for the Chamber have especially deep familiarity with issues relating to the enforceability of arbitration provisions under the FAA. The Chamber submitted an *amicus* brief, and counsel for the Chamber was granted leave to present oral argument, in *NLRB v. Alternative Entertainment, Inc.* (6th Cir. No. 16-1385, argued Nov. 30, 2016); *Patterson v. Raymours Furniture Co.*, --- F. App'x ---, 2016 WL 4598542 (2d Cir. Sept. 2, 2016); and *Iskanian v. CLS Transportation of Los Angeles, LLC*, 327 P.3d 129 (Cal. 2014), each of which involved the same issue that is presented here, and in *Johnmohammadi v. Bloomingdale's, Inc.*, 755 F.3d 1072 (9th Cir. 2014), which likewise involved the *D.R. Horton* issue (although not fully resolving it). Representing AT&T, counsel for the Chamber here were lead counsel for the petitioner in *AT&T Mobility LLC v. Concepcion*, 563

U.S. 333 (2011), a case that is central to resolution of the *D.R. Horton* issue. In addition, counsel for the Chamber here filed an *amicus* brief for the Chamber in *American Express Co. v. Italian Colors Restaurant*, 133 S. Ct. 2304 (2013), another case that can be expected to bear heavily on resolution of the *D.R. Horton* issue.

4. In light of the substantial interest of the Chamber and its members in the *D.R. Horton* issue raised in this case and the Chamber's and its counsel's experience in addressing that issue, the Chamber submits that permitting it to participate in oral argument would materially assist the Court.

CONCLUSION

The Court should grant divided argument in this matter.

Dated: January 3, 2017

Kate Comerford Todd
Warren Postman
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, N.W.
Washington, DC 20062
(202) 463-5337

Respectfully submitted,

s/ Evan M. Tager
Andrew J. Pincus
Evan M. Tager
Archis A. Parasharami
Matthew A. Waring
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
(202) 263-3000
etager@mayerbrown.com

Counsel for The Chamber of Commerce of the United States of America

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27, the undersigned counsel for movant certifies that this motion:

(i) complies with the type-volume limitation of Rule 27(d)(2)

because it contains 663 words; and

(ii) complies with the typeface requirements of Rule 27(d)(1)(E)

because it has been prepared using Microsoft Office Word 2007 and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

Dated: January 3, 2017

s/ *Evan M. Tager*

Evan M. Tager

CERTIFICATE OF SERVICE

I certify that on January 3, 2017, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

Dated: January 3, 2017

s/ *Evan M. Tager*

Evan M. Tager