

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Bridget Mabe,

Plaintiff,

v.

Wal-Mart Associates, Inc.,

Defendant.

No. 1:20-cv-00591

Thomas J. McAvoy, U.S.D.J.

NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

PLEASE TAKE NOTICE that the Retail Litigation Center, Inc., the Chamber of Commerce of the United States of America, the National Federation of Independent Business Small Business Legal Center, the National Retail Federation, the Restaurant Law Center, the New York State Restaurant Association, the Business Council of New York State, and the Business Council of Westchester (collectively, “*Amici*”), through counsel, respectfully move this Court for leave to file, as amici curiae, the brief attached as **Exhibit A** in support of Defendant Wal-Mart Associates, Inc.’s motion to amend and certify the Court’s March 24, 2022 order for interlocutory appeal (ECF No. 40). In support of this motion, Amici state as follows:

1. *Amici* are trade and business associations representing members who collectively employ hundreds of thousands of workers in New York. They have a unique perspective, based on their members’ first-hand experiences, on why the legal issues in this case have enormous practical significance for employers across many industries and merit immediate consideration by the U.S. Court of Appeals for the Second Circuit—and potentially the New York Court of Appeals. *Amici* include:

- The Retail Litigation Center, Inc. (“RLC”) is the only trade organization solely dedicated to representing the United States retail industry in the courts. The RLC’s members include many of the country’s largest and most innovative retailers. Collectively, they employ millions of workers throughout the United States, provide goods and services to tens of millions of consumers, and account for tens of billions of dollars in annual sales. The RLC seeks to provide courts with retail-industry perspectives on important legal issues impacting its members, and to highlight the potential industry-wide consequences of significant pending cases. Since its founding in 2010, the RLC has participated as *amicus curiae* in more than 175 judicial proceedings of importance to retailers.
- The Chamber of Commerce of the United States of America is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and 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. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation’s business community.
- The National Federation of Independent Business (“NFIB”) is the nation’s leading small business association, representing members in Washington, D.C., and all fifty states. Its membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB’s mission is to promote and protect the right of its members to own, operate, and grow their businesses. The NFIB Small Business Legal

Center (“Legal Center”) is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation’s courts through representation on issues of public interest affecting small businesses. To fulfill its role as the voice for small business, the Legal Center frequently files *amicus* briefs in cases that will impact small businesses.

- The National Retail Federation (“NRF”) is the world’s largest retail trade association and the voice of retail worldwide. The NRF’s membership includes retailers of all sizes, formats and channels of distribution, as well as restaurants and industry partners from the United States and more than 45 countries abroad. In the United States, the NRF represents the breadth and diversity of an industry that is the nation’s largest sector employer with more than 52 million employees and contributes \$3.9 trillion annually to GDP. NRF has filed briefs in support of the retail community on topics stemming from the pandemic, including workers’ compensation and COVID-19 vaccine policies.
- The Restaurant Law Center (“Law Center”) is the only independent public policy organization created specifically to represent the interests of the food service industry in the courts. This labor intensive industry is comprised of over one million restaurants and other foodservice outlets employing 15 million people—approximately 10 percent of the U.S. workforce. Restaurants and other foodservice providers are the second largest private-sector employers in the United States. Through *amicus* participation, the Law Center provides courts with perspectives on legal issues that have the potential to significantly impact its members and their industry. The Law Center’s *amicus* briefs have been cited favorably by state and federal courts.

- The New York State Restaurant Association (“NYSRA”) is a not-for-profit employer association that represents food service establishments throughout New York State. Founded in 1935, the NYSRA is the oldest and most comprehensive professional organization for restaurant management in New York. It provides a forum for restaurants to exchange ideas and information, participate in creative problem-solving, and receive education. The NYSRA has over 10,000 members representing nearly every type of dining establishment in New York State. NYSRA participates through *amicus* briefs in cases such as this one with a significant impact on our industry. Most NYSRA members are covered by the New York Labor Law section that is the subject of this case.
- The Business Council of New York State, Inc., is the leading business organization in New York State, representing the interests of large and small firms throughout the state. Our membership is made up of roughly 3,500 member companies, local chambers of commerce and professional and trade associations. Though 72 percent of our members are small businesses, we also represent some of the largest and most important corporations in the world. Combined, our members employ more than 1.2 million New Yorkers. We serve as an advocate for employers in the state’s political and policy-making arenas, working for a healthier business climate, economic growth, and jobs. We also provide important benefits to our members’ employees with group insurance programs and serve as an information resource center for our members.
- The Business Council of Westchester is the county’s largest and most prestigious business membership organization representing more than 1,000 members, including multinational corporations, hospitals, universities, biotech pioneers, not-for-profits, entrepreneurs and companies of all sizes. As the most influential economic development and advocacy

organization in Westchester, The Business Council of Westchester's members enjoy unparalleled access to today's top thought leaders, diverse business development opportunities and lawmakers at all levels of government.

2. *Amici* respectfully submit that the brief attached as Exhibit A will be helpful to the Court in its determination of whether to certify the March 24, 2022 order for immediate appeal pursuant to 28 U.S.C. § 1292(b).

3. *Amici's* brief focuses on the enormous and potentially crippling impact the legal issues addressed in the March 24 order have for New York employers across various industries.

4. Defendant's papers demonstrate that the three statutory criteria necessary for certification under 28 U.S.C. § 1292(b) are present here. *Amici* respectfully submit that their brief demonstrates why the Court should exercise its discretion to certify the March 24 order for immediate appeal.

WHEREFORE, *Amici* respectfully seek leave to file the brief attached as Exhibit A as *amici curiae* in support of Defendant's motion to certify the March 24, 2022 order for immediate appeal (ECF No. 40).

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: April 28, 2022

s/ Stephanie Schuster
Stephanie Schuster
Michael E. Kenneally
1111 Pennsylvania Avenue NW
Washington, DC 20004
T: (202) 739-3000
F: (202) 739-3001
stephanie.schuster@morganlewis.com
michael.kenneally@morganlewis.com

Counsel for Amici

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2022, the foregoing and Exhibit A thereto was electronically filed with the Clerk of the Court by using the CM/ECF system, which will automatically send a notice of electronic filing to all counsel of record.

Dated: April 28, 2022

s/ Stephanie Schuster