

HERSH AND HERSH

March 27, 2007

Cathy A. Catterson, Clerk of Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Dukes v. Wal-Mart Stores, Inc.*, No. 04-16688

Dear Ms. Catterson,

We are writing on behalf of the U.S. Women's Chamber of Commerce to request permission to submit this letter as an amicus curiae in support of Plaintiffs' Opposition to the petition for rehearing en banc pursuant to Ninth Circuit Advisory Committee Note to Circuit Rule 29-1 encouraging amici to file a short letter in lieu of a brief.

The U.S. Women's Chamber of Commerce ("Women's Chamber") is a not-for-profit advocacy group with national headquarters located in Washington, D.C. The Women's Chamber is the preeminent national women's chamber of commerce network, representing 500,000 individuals, business owners, career professionals, women's organizations, economic development organizations and leadership organizations. Founded in 2001, its mission is to develop leaders, accelerate economic growth and promote economic opportunity for women at every level of the U.S. economy. It is specifically concerned with the ability of women to organize in order to address historic issues of economic discrimination against women. It is the goal of the Women's Chamber to move women's economic role from merely a "target market" for corporate and political gain to be recognized as *the leading economic force in America*.

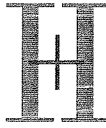
The Women's Chamber agrees with the arguments set forth in the Plaintiffs' Opposition to Petition for Rehearing En Banc. The Women's Chamber submits this letter to underscore the vital importance of this case to expose gender discrimination in the workplace and to vindicate women's essential legal rights.

For Women, the Promise of Equal Pay Is Still Only A Promise

Despite years of advancement and acknowledgement of the growing economic clout of women, women still do not stand on equal footing with men in the workplace. In 1995, the federal Glass Ceiling Commission issued a fact finding report titled "Good for Business: Making Full Use of the Nation's Human Capital."¹ In that report, the Commission found that in the

¹ U.S. Glass Ceiling Commission, Good for Business: Making Full Use of the Nation's Human Capital: The Environmental Scan (1995), www.digitalcommons.ilr.cornell.edu/key_workplace/116. The Glass Ceiling

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private sector, “equally qualified and similarly situated citizens are being denied equal access to advancement into senior-level management on the basis of gender, race, or ethnicity. At the highest levels of corporations the promise of reward for preparation and pursuit of excellence is not equally available to members of all groups.” The almost 300-page report detailed the barriers to entry for women and minorities including factual findings and conclusions. A second report provided recommendations and a strategic plan noting that “the glass ceiling is not only an egregious denial of social justice that affects two-thirds of the population, but a serious economic problem that takes a huge financial toll on American business.”² In 2002, a report of the General Accounting Office found that a majority of women managers were worse off in 2000, relative to men, than they were in 1995.³ A report issued in 2003 noted that despite the media’s identification of the glass ceiling problem over twenty years ago, and the government’s acknowledgement and promotion of suggestions some ten years prior, the glass ceiling persists and the progress of women into the upper echelons of communications companies had become stagnant.⁴

Despite the media attention to the problem and government support of a bipartisan commission, women’s earnings have continued to lag behind as compared to men’s earnings. According to the United States Department of Labor, in 2005, women earned only 81 percent of what men earned.⁵ At the same time, almost 60 percent of all women were in the labor force and women made up 46.4 percent of the total civilian labor force. It is not surprising that women have sought redress in the courts for the gaping disparities in pay and promotions and to seek equal treatment in the workplace.

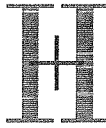
Commission was established by Title II of the Civil Rights Act of 1991 which created a bipartisan commission of twenty-one members charged with a mission to “conduct a study and prepare recommendations on eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business.”

² U.S. Glass Ceiling Commission, *A Solid Investment: Making Full Use of the Nation’s Human Capital* (1995), www.digitalcommons.ilr.cornell.edu/key_workplace/120.

³ *A New Look Through the Glass Ceiling: Where are the Women? The Status of Women in Management in Ten Selected Industries* (January 2002), <http://maloney.house.gov/documents/olddocs/womenscaucus/dingellmaloneyreport.pdf>.

⁴ See Erika Falk and Erin Grizard, *The Glass Ceiling Persists: The 3rd Annual APPC Report on Women Leaders in Communication Companies*, The Annenberg Public Policy Center for the University of Pennsylvania (2003), www.annenbergpublicpolicycenter.org/.../women_leadership/2003_04_the-glass-ceiling-persists_rpt.pdf.

⁵ *Employment Status of Women and Men in 2005*, www.dol.gov/wb/factsheets/Of-ESWMo5.htm.



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**A Class Action Provides the Only Feasible Means for Women to Address Gender Inequality
against the World's Largest Private Employer.**

First, a class action provides the only practical means for most women in low-wage jobs to redress discrimination in pay because of such workers' often tenuous economic status. Women generally have primary responsibility for children's care, and sometimes for elders' care, as well, and nearly 50% of women shoulder these responsibilities without a spouse.⁶ Women are 45% more likely to be poor than men.⁷ Because of these familial obligations and their often strained finances, low-wage women particularly cannot risk leaving a job or antagonizing an employer to challenge discriminatory practices.

Second, given the vast resources available to Wal-Mart, a class action provides the only feasible means for individual women in this case to redress this economic discrimination. Without the ability to aggregate their claims, individual women are practically powerless to access accurate data to support claims of pay inequality. Given corporate policies against discussing individual pay, often women may not even be aware of the discrepancy between their own pay and their male peers. A class action provides the opportunity for women to access complete and accurate payroll data.

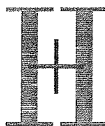
Moreover, the relatively small size of low-wage workers' individual pay claims makes individual litigation to resolve these disparities impracticable. A formula determination of pay and promotion claims not only provides a fair and efficient means to adjudicate the claims of the 1.5 million women who would otherwise be powerless against the largest private employer in the world, but provides the *only* practicable means by which these women will receive any remedy at all.⁸ Without the ability to join their claims together and to seek redress of the violation of rights as a class action, the rights of Wal-Mart's women workers to be free of gender discrimination under Title VII are little more than an unfulfilled promise.

For the reasons stated and those set forth in Plaintiffs' brief, the Women's Chamber respectfully requests that the Court deny Defendant-Appellant's petition for rehearing en banc.

⁶ U.S. Census Bureau, Current Population Survey, 2003 Annual Social and Economic Supplement, September 2004, <http://www.census.gov/population/www/socdemo/hh-fam/cps2005.html>.

⁷ Legal Momentum, *Reading Between the Lines: Women's Poverty in the United States 2005*, http://legalmomentum.org/legalmomentum/publications/womens_poverty/.

⁸ Wal-Mart was able to promulgate and implement its policies and procedures on a nationwide basis. Plaintiffs and the class of women affected by these policies should likewise be able to seek a nationwide remedy to their discriminatory effect.



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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark E. Burton, Jr.', written over the typed name.

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PROOF OF SERVICE

I, JUDY OLASOV, declare:

I am employed in the City and County of San Francisco, California.

I am over the age of 18 years and not a party to the within cause; my business address is 601 Van Ness Avenue, Suite 2080, San Francisco, California 94102-6388.

On March 27, 2007, I served the attached

LETTER BRIEF

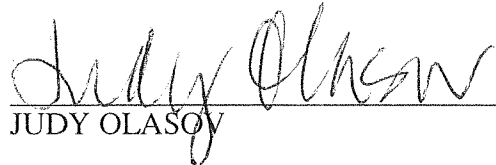
in said action by placing a true copy thereof, enclosed in a sealed envelope, each envelope addressed as follows:

SEE ATTACHED LIST

- (BY MAIL)** I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Francisco, California.
- (BY PERSONAL SERVICE)** I caused each such envelope to be delivered by hand to the offices of each addressee above.
- (BY FAX)** I transmitted via facsimile the document(s) listed above to the fax number(s) set forth above on this date before 5:00 p.m.

I declare under penalty of perjury that the above is true and correct.

Executed March 27, 2007, at San Francisco, California.



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