

Case No. 14-51311

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

LORETTA I. EURE,

Plaintiff-Appellant

v.

THE SAGE CORPORATION,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
No. 5:12-CV-1119, Hon. David A. Ezra, Presiding

UNOPPOSED MOTION OF *AMICUS CURIAE*
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT
ON TIME CEDED BY PLAINTIFF-APPELLANT EURE

Amicus curiae Equal Employment Opportunity Commission (“EEOC” or “Commission”) moves for leave to participate in oral argument on five (5) minutes of time ceded by Plaintiff-Appellant Lorenzo Eure (formerly known as Loretta Eure) (“Eure”), pursuant to Fed. R. App. P. 27, 35, and 40. This case is calendared

for argument before this Court on October 6, 2015. The grounds for the EEOC's request are as follows:

1. The EEOC is the federal agency established by Congress to administer, interpret, and enforce the provisions of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.*, and other federal anti-discrimination statutes.
2. In this enforcement role, the EEOC frequently participates as an *amicus curiae* in the federal courts of appeals in cases that, like this one, raise important issues pertaining to effective enforcement of Title VII's protections from workplace discrimination. *See* Fed. R. App. P. 29 (permitting United States agencies, such as the EEOC, to file *amicus-curiae* briefs in the courts of appeals).
3. In this case, Eure, who is transgender, brought a Title VII sex discrimination claim against his former employer, Defendant-Appellee The Sage Corporation ("Sage"). The district court granted summary judgment to Sage on the rationale that Eure could not show that Sage discriminated against him "because of ... sex." The district court held that Eure had not presented evidence showing that the disparate treatment he experienced was based on gender stereotypes.
4. This appeal raises the critical issue of what is required to establish that discrimination occurred "because of ... sex" under Title VII. Specifically, it poses the question of whether a transgender individual may establish sex discrimination

based on transgender status, or whether the individual must present additional evidence of gender stereotyping to establish a sex discrimination claim. This appeal also involves the important question of what constitutes an adverse employment action for Title VII discrimination claims.

5. Because these issues are important to the effective enforcement of Title VII rights in the workplace, the EEOC offered its views to this Court as *amicus curiae* in a brief filed on April 22, 2015. For the same reasons, the Commission now seeks this Court's leave to participate in oral argument scheduled for October 6, 2015, on time ceded by Plaintiff-Appellant Brandon.

8. This Court has allowed the EEOC to participate in oral argument as *amicus curiae* numerous times in appeals addressing federal anti-discrimination protections, including, in recent years, *Johnson v. Maestri-Murrell Property Management, LLC*, 487 F. App'x 134 (5th Cir. 2012) (Title VII race discrimination), and *Dediol v. Best Chevrolet, Inc.*, 655 F.3d 435 (5th Cir. 2011) (Title VII hostile work environment). Also, of particular relevance to the present case, in *Cherry v. Shaw Coastal, Inc.*, 668 F.3d 182 (5th Cir. 2012), this Court granted the EEOC leave to present oral argument in an appeal raising the issue of whether harassment occurred "because of ... sex." And in *Pegram v. Honeywell, Inc.*, 361 F.3d 272 (5th Cir. 2004), this Court permitted the EEOC to present oral

argument in an appeal raising the issue of what constitutes an adverse employment action.

7. The EEOC has also participated as *amicus curiae* in oral arguments in other United States courts of appeals in matters posing issues similar to those raised here. *See, e.g., Walker v. Mod-U-Kraf Homes, LLC*, 775 F.3d 202 (4th Cir. 2014) (“because of ... sex”); *Brady v. Wal-Mart Stores, Inc.*, 531 F.3d 127 (2d Cir. 2008) (adverse employment action); *Durkin v. City of Chicago*, 341 F.3d 606 (7th Cir. 2003) (adverse employment action).

8. Brandon’s counsel, Peter Renn and Robert Smith, represented that Eure consents to the EEOC’s participation in oral argument and cedes five (5) minutes of his argument time to the EEOC for this purpose.

9. Sage’s counsel, John Hawkins, represented that Sage does not object to the EEOC’s motion.

Accordingly, the Commission respectfully requests leave to participate in the oral argument in this appeal, scheduled before this Court on October 6, 2015, using five (5) minutes of time ceded by Plaintiff-Appellant Eure.

Respectfully submitted,

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s/ Anne W. King _____
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Dated: August 26, 2015

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system, which will transmit a Notice of Electronic Filing to all participants in this case, who are all registered CM/ECF users.

s/ Anne W. King
ANNE W. KING
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