

No. 02-575

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 2002

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NIKE, INC., *ET AL.*,

*Petitioners,*

v.

MARC KASKY,

*Respondent.*

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**On Petition for a Writ of Certiorari  
to the Supreme Court of California**

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**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*  
AND BRIEF *AMICUS CURIAE* OF THE CHAMBER OF  
COMMERCE OF THE UNITED STATES OF AMERICA  
IN SUPPORT OF PETITIONERS**

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November 15, 2002

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**MOTION FOR LEAVE TO FILE  
BRIEF *AMICUS CURIAE***

The Chamber of Commerce of the United States of America (“Chamber”) respectfully requests leave to file the attached brief *amicus curiae* pursuant to the Court’s Rule 37.2. Petitioners have consented to the filing of this brief in a letter filed with the Clerk. Respondent has withheld consent.

The Chamber is the world’s largest federation of business organizations and individuals. The Chamber represents an underlying membership of more than three million businesses of every size, in every business sector, and from every geographic region of the country. One of the Chamber’s primary missions is to represent the interests of its members by filing *amicus* briefs in cases involving issues of national concern to American business.

The Chamber and its members have a strong interest in this case because the California Supreme Court significantly curtailed freedom of expression by holding that *most* speech by businesses is “commercial speech” subject to reduced First Amendment protection. This holding is so extreme that even speech on public policy matters such as labor, environmental, and economic issues involving a company’s operations can be denigrated as “commercial speech.” A substantial amount of speech is at jeopardy.

Just as petitioner Nike, Inc. discussed its overseas labor operations in the statements at issue, other businesses frequently discuss various aspects of their operations in the course of ongoing public policy debates. For example, automobile manufacturers, such as the Ford Motor Company, articulate their positions on whether and to what extent automobile emissions cause pollution and health effects, and the costs and feasibility of requiring further reductions in automobile emissions, *see, e.g., Bill Ford’s Speech to Greenpeace, at [www.ford.com/en/our/Company/](http://www.ford.com/en/our/Company/)*

environmental Initiatives/ environmental Actions/ bill Ford (Oct. 5, 2000). Health care providers and drug manufacturers, such as Merck, state their positions on the causes of their rising health care and drug prices, and the form of regulation or deregulation that will best help to control those prices, *see, e.g., Remarks by Raymond V. Gilmartin, Chief Executives Club of Boston, at www.merck.com/newsroom/executivespeeches/011900.html* (Jan. 19, 2000). Energy companies, such as ChevronTexaco and Duke Energy, state their positions on whether or to what extent their operations cause or contribute to global climate change, and the role of their operations in any changes, *see, e.g., Statement on Global Climate Change, at www.chevrontexaco.com/environment* (last visited Nov. 11, 2002); *Statement on Global Climate Change, at www.dukeenergy.com/decorp/content/environment/deip12.asp?RBU=1* (last visited Nov. 11, 2002). Insurance companies, such as AIG and General Re, state their positions on the feasibility of providing terrorism insurance and the economic need for legislative action, *see, e.g., Terrorism Insurance Still On Front Burner For Insurers, Lawmakers, Ins. J., at www.insurancejournal.com/magazines/southcentral/2002/05/13/features/19079.htm* (May 13, 2002). And manufacturers, such as General Electric, state their positions on environmental discharges and the effects that any discharges have had on rivers and other natural resources, *see, e.g., Statement on GE Hudson River Efforts, at www.ge.com/commitment/ehs/leadership/ehs\_hudson\_river.htm* (last visited Nov. 11, 2002).

Under the California Supreme Court's decision, all of this speech could be subjected to the reduced First Amendment protection accorded "commercial speech," and corporations could be held strictly liable for any and all factual misstatements made in the course of heated and fast-moving debates. Such treatment marks a serious intrusion on our system of free expression. Speech on public policy

