

Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LISA HOOPER, BRANDIE OSBORNE,
KAYLA WILLIS, REAVY WASHINGTON,
individually and on behalf of a class of similarly
situated individuals, THE EPISCOPAL
DIOCESE OF OLYMPIA, TRINITY PARISH
OF SEATTLE, and REAL CHANGE,

Plaintiffs,

v.

CITY OF SEATTLE, WASHINGTON,
WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION; ROGER MILLAR,
SECRETARY OF TRANSPORTATION FOR
WSDOT, in his official capacity,

Defendants.

No. 2:17-cv-00077-RSM

REPLY OF NATIONAL LAW CENTER ON
HOMELESSNESS & POVERTY IN
SUPPORT OF ITS MOTION FOR LEAVE
TO FILE AN AMICUS BRIEF IN
SUPPORT OF PLAINTIFFS’ MOTION
FOR A PRELIMINARY INJUNCTION

NOTE ON MONTION CALENDAR:
Friday, July 14, 2017

The National Law Center on Homelessness & Poverty (the “Law Center”) respectfully
files this reply in support of its motion for leave to file an amicus brief (Dkt. 145) (the “Motion
for Leave”).

**I. The Proposed Amicus Brief Offers “Unique Information [and] Perspective That
Can Help the Court” in Deciding Plaintiffs’ Motion.**

Defendants’ opposition to the Law Center’s Motion for Leave relies on a contorted
reading of case law to assert a standard that no amicus could ever meet. According to
Defendants, an amicus brief must be rejected if it discusses facts, takes a position on the merits,
makes any legal argument the parties are able to make, or provides any information not

1 introduced through sworn testimony. (*See* Dkt. 150 (“Opposition”) at 1-2, 4-5.) It is difficult to
2 imagine what sort of amicus brief would be acceptable under Defendants’ standard or how any
3 such brief would be useful to the Court.

4 Defendants’ standard is not the correct standard. As stated in the Law Center’s Motion
5 for Leave, “Whether to allow amici to file a brief is solely within the court’s discretion, and
6 generally courts have exercised great liberality.” *Int’l Franchise Ass’n v. City of Seattle*, No. 14-
7 cv-848, Dkt. 93 at 2 (W.D. Wash. March 18, 2015) (internal quotation marks omitted) (granting
8 leave to file amicus brief). “[T]here are no strict prerequisites that must be established prior to
9 qualifying for amicus status; an individual seeking to appear as amicus must merely make a
10 showing that his participation is useful or otherwise desirable to the court.” *Id.* (quotation marks
11 and citation omitted). Among other things, the Court may consider amicus briefs from non-
12 parties “concerning legal issues that have potential ramifications beyond the parties directly
13 involved or if the amicus has ‘unique information or perspective that can help the court beyond
14 the help that the lawyers for the parties are able to provide.’” *NGV Gaming, Ltd. v. Upstream*
15 *Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (emphasis added) (quoting
16 *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)). Indeed, “[n]o matter who a would-be
17 amicus curiae is . . . the criterion for deciding whether to permit the filing of an amicus brief
18 should be the same: whether the brief will assist the judges by presenting *ideas, arguments,*
19 *theories, insights, facts, or data that are not to be found in the parties’ briefs.*” *Voices for*
20 *Choices v. Illinois Bell Telephone Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (Posner, J., in
21 chambers) (emphasis added).

22 That is exactly what the Law Center seeks to do here. The proposed amicus brief does
23 not duplicate any material already raised by either party, and the unique information provided
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1 should be useful to the Court in comparing Defendants’ practices to those implemented by other
2 municipalities and those recommended in the Law Center’s model. The studies contained in the
3 Law Center’s amicus brief will further be useful to the Court in assessing the irreparable harm
4 the class members are likely to suffer if the preliminary injunction is not granted and the
5 credibility of Defendants’ arguments about how a preliminary injunction may affect the public
6 interest.
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8 Defendants attempt to create a lose-lose dilemma by arguing incorrectly that it is
9 impermissible for an amicus to present facts under any circumstances or to present any legal
10 arguments if the parties are “able to provide” the same. (Opposition at 4-5.) If this were the
11 correct standard, no amicus brief could ever be filed. The parties are always “able to provide”
12 legal arguments, and if factual arguments are never appropriate in an amicus, there is no role for
13 an amicus in any case. This cannot be the rule. *See Voices for Choice*, 339 F.3d at 545
14 (including “ideas, arguments, theories, insights, facts, or data” among the useful contributions an
15 amicus can provide the Court).
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17 Defendants also assert that leave should be denied because the Law Center is, in its view,
18 “partisan.” (Opposition at 4.) There is nothing inappropriate with the Law Center offering
19 information that supports its own mission but may also be more helpful to one party than the
20 other. *See Jamul Action Committee v. Stevens*, No. 13-cv-1920, 2014 WL 3853148, at *5 (E.D.
21 Cal. Aug. 4, 2014) (granting leave to file amicus brief to an entity that “seeks to assert its own
22 interests” over objection that it was not a neutral party). Moreover, the Ninth Circuit has made
23 clear that “there is no rule that amici must be totally disinterested.” *See Funbus Systems, Inc. v.*
24 *State of Cal. Public Utilities Comm’n*, 801 F.2d 1120, 1125 (9th Cir. 1986). Indeed, the view of
25 amici as impartial advisers “became outdated long ago” and is “contrary to the fundamental
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1 assumption of our adversary system that strong (but fair) advocacy on behalf of opposing views
2 promotes sound decision making.” *Neonatology Assocs., P.A. v. Comm’r of Internal Revenue*,
3 293 F.3d 128, 131 (3d Cir. 2002) (Alito, J.). As then-Circuit Judge Alito observed in the
4 *Neonatology* case, Federal Rule of Appellate Procedure 29 requires an amicus to have an
5 “interest” in the case, and “[i]t would be virtually impossible for an amicus to show that it” meets
6 this requirement but is nonetheless wholly impartial. *Id.* Finally, “[t]he court has the ability to
7 glean useful information from the [amicus] filing without being swayed by any pure advocacy.”
8 *Jamul Action Committee*, 2014 WL 3853148, at *5; *Pickup v. Brown*, No. 12-cv-2497, 2012 WL
9 12965030, at *1 (E.D. Cal. Nov. 21, 2012) (same).

11 **II. Defendants’ Evidentiary Arguments Lack Merit.**

12 At various points Defendants improperly raise evidentiary objections to the information
13 presented in the proposed brief. (Opposition at 5-6.) There is no evidentiary standard for leave
14 to file an amicus brief, and Defendants have cited no law to the contrary. In any event, the
15 information is relevant and useful because it enables the Court to consider the reasonableness of
16 Defendants’ practices in the context of other alternatives Defendants could have adopted as
17 evidenced by the Law Center’s model policy and the policies adopted either voluntarily or
18 pursuant to court orders in other jurisdictions. Likewise, the Law Center’s brief provides
19 relevant information concerning the impact of sweeps in other jurisdictions, which may be useful
20 to the Court in considering what impact granting or denying a preliminary injunction is likely to
21 have on the class members and the public interest in Seattle.

24 **III. Defendants’ Remaining Arguments Lack Merit.**

25 Defendants argue that permitting the amicus brief to be filed would be prejudicial.
26 (Opposition at 3-4.) In particular, Defendants argue that any amicus brief is untimely if filed
27 after the deadline for Plaintiffs’ principal brief. (*Id.* at 4.) Defendants cite no authority for a

1 requirement that an amicus brief be filed prior to when even the moving party's brief is filed.
 2 Indeed, if that were the rule, amici would be forced to file briefs that potentially duplicate the
 3 information in another party's brief, meaning the amicus brief would lack the "unique
 4 information" required of amicus briefs and therefore be unhelpful to the Court. Moreover, the
 5 Law Center's Motion for Leave, containing only an eleven-page proposed amicus brief, was
 6 filed on June 29, nearly a month prior to Defendants' July 28, 2017 deadline to respond to
 7 Plaintiffs' principal brief. Defendants therefore have almost a month to prepare a response if
 8 they wish.
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10 Finally, Defendants complain that the Law Center did not provide them with a copy of
 11 the proposed amicus brief as it was being drafted. (Opposition at 3.) The Law Center had no
 12 obligation to provide such a draft of the brief, or any other material. As a courtesy, however, the
 13 Law Center did provide Defendants with an advance copy of the Motion for Leave. That
 14 document is the focal point of the briefing here, and it provided Defendants with a significant
 15 amount of advance information on the issues currently being briefed: the identity of the Law
 16 Center, its interest in this case, the law on which it is basing its request, and the type of
 17 information it wishes to present in the proposed amicus brief. Defendants have therefore had a
 18 surplus of information necessary to consider their position and prepare a response.
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21 **IV. Conclusion**

22 For these reasons, the Law Center respectfully requests that the Court grant it leave to file
 23 the amicus brief to its Motion for Leave. Dkt. 145-1.

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1 Dated: July 14, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to the following:

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Submitted this 14th day of July, 2017

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