

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMERICAN FREEDOM DEFENSE
INITIATIVE, PAMELA GELLER, and
ROBERT SPENCER,

Plaintiffs

v.

KING COUNTY, a municipal corporation,

Defendant.

No. 13-CV-1804-RAJ

AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON'S MOTION FOR
LEAVE TO FILE *AMICUS* BRIEF

Noting Date: Nov. 22, 2013

The American Civil Liberties Union of Washington ("ACLU") respectfully moves, pursuant to the Court's inherent authority, to file a brief as *amicus curiae* regarding whether Sections 6.2.4, 6.2.8, and 6.2.9 of King County's Transit Advertising Policy are facially invalid and in violation of the First Amendment. A copy of the proposed brief is attached as Exhibit A to this Motion.

I. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT AMICUS BRIEFS

Federal district courts possess the inherent authority to accept *amicus* briefs. *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006) ("[D]istrict courts possess the inherent authority to appoint 'friends of the court' to assist in their proceedings."); *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008)

1 (“district courts have inherent authority to appoint or deny *amici* which is derived from Rule
 2 29 of the Federal Rules of Appellate Procedure”); *United States v. Davis*, 180 F. Supp. 2d
 3 797, 800 (E.D. La. 2001) (noting that district courts have authority to permit the filing of
 4 *amicus* briefs). The role of *amici* is to assist the court “in cases of general public interest by
 5 making suggestions to the court, by providing supplementary assistance to existing counsel,
 6 and by insuring a complete and plenary presentation of difficult issues so that the court may
 7 reach a proper decision.” *Newark Branch, N.A.A. C.P. v. Town of Harrison*, N.J., 940 F.2d
 8 792, 808 (3d Cir. 1991). This authority supports the Court’s exercise of its discretion to
 9 accept the ACLU’s *amicus* brief.

10 **II. THE PROPOSED ACLU BRIEF PROVIDES SUPPLEMENTAL ANALYSIS OF** 11 **KING COUNTY’S TRANSIT ADVERTISING POLICY ON MATTERS** 12 **RAISED BY THE PARTIES BUT NOT BRIEFED IN THEIR ENTIRETY**

13 The ACLU has reviewed the briefs filed to date in this case in order to avoid
 14 unnecessary duplication of the parties’ arguments. This case challenges King County’s
 15 exclusion of an ad submitted by Plaintiffs American Freedom Defense Initiative, Pamela
 16 Geller, and Robert Spencer (collectively, “AFDI”) from King County’s transit advertising
 17 forum. King County claims that Plaintiffs’ ad violates its Transit Advertising Policy.
 18 However, the sections King County relied upon to reject Plaintiffs’ ad are facially invalid and
 19 in violation of the First Amendment. The Court’s review of the exclusion of Plaintiffs’ ad
 20 must also include a determination of whether the policy itself violates the First Amendment,
 21 as the application of an unconstitutional policy to protected speech will result in acts of
 22 censorship.

23 The ACLU of Washington is a statewide, nonpartisan, nonprofit organization with over
 24 20,000 members dedicated to the preservation and defense of constitutional rights and civil
 25 liberties within the State of Washington. The ACLU strongly supports the freedom of speech
 26 and of the press, and has participated as a party, *amicus*, or counsel in numerous cases

1 involving the federal and state constitutional guarantees of free speech, including in transit
 2 advertising and other public forums. *See, e.g., Seattle Mideast Awareness Campaign v. King*
 3 *County*, 11-cv-00094 (W.D. Wash.) (as counsel); *Prison Legal News v. Spokane County*, 11-
 4 cv-029 (E.D. Wash.) (as *amicus*); *Berger v. City of Seattle*, 569 F.3d 1029 (9th Cir. 2009) (as
 5 *amicus*).

6
 7 **III. IF THE COURT ALLOWS THE ACLU TO FILE ITS *AMICUS* BRIEF THE
 PARTIES SHOULD BE GIVEN AN OPPORTUNITY TO RESPOND**

8 If the Court grants the ACLU's Motion to participate as *amicus* and accepts its brief
 9 for filing, the parties should have an adequate opportunity to respond. The ACLU requests
 10 that the Court set December 6, 2013 as the due date for the parties' responses to the *amicus*
 11 brief, with no Reply permitted.

12 Respectfully submitted, and DATED this 31st day of October, 2013.

13 /s La Rond Baker
 14 La Rond Baker, WSBA No. 43610
ACLU OF WASHINGTON FOUNDATION
 15 Sarah A. Dunne, WSBA No. 34869
 La Rond Baker, WSBA No. 43610
 16 901 5th Avenue, Suite 630
 Seattle, WA 98164-2008
 17 Telephone: (206) 624-2184
 lbaker@aclu-wa.org
 18 dunne@aclu-wa.org

19 /s Venkat Balasubramani
 20 Venkat Balasubramani, WSBA No. 28269
FOCAL PLLC
 21 800 Fifth Avenue, Suite 4100
 Seattle, WA 98104
 22 Telephone: (206) 529-4827
 venkat@focallaw.com
 23

24 Cooperating Attorney for ACLU of Washington
 Foundation
 25
 26

CERTIFICATE OF SERVICE

I hereby certify that on October 31st, 2013, I filed the foregoing (1) Motion for Leave to File Amicus Brief (with the proposed *Amicus* Brief as an attached exhibit); and (2) Proposed Order Granting Leave to File *Amicus* Brief, using the Court's CM/ECF system which will send notification of such filing to the following counsel of record:

David Yerushalmi
AMERICAN FREEDOM LAW CENTER
1901 PENNSYLVANIA AVENUE NW
SUITE 201
WASHINGTON, DC 20006
646-262-0500
dyerushalmi@aflc.us

Linda Montecucco Gallagher
KING COUNTY
PROSECUTING ATTORNEY'S
OFFICE (4TH AVE)
500 4TH AVE
STE 900
SEATTLE, WA 98104-5039
206-296-0430
linda.gallagher@kingcounty.gov

Robert J Muise
AMERICAN FREEDOM LAW CENTER
PO BOX 131098
Ann Arbor, MI 48113
734-635-3756
rmuise@aflc.us

David JW Hackett
KING COUNTY
PROSECUTING ATTORNEY'S
OFFICE (4TH AVE)
500 4TH AVE
STE 900
SEATTLE, WA 98104-5039
206-205-0580
david.hackett@kingcounty.gov

Stephen Walter Pidgeon
3002 COLBY AVENUE
SUITE 306
EVERETT, WA 98201
425-605-4774
Email: stephen.pidgeon@comcast.net

/s/ Venkat Balasubramani
Venkat Balasubramani, WSBA No. 28269