

THE HONORABLE JAMES L. ROBERT

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UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

No. 2:17-cv-00141-JLR

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION'S
MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF

DONALD TRUMP, in his official capacity as
President of the United States, U.S.
DEPARTMENT OF HOMELAND
SECURITY; JOHN F. KELLY, in his official
capacity as Secretary of the Department of
Homeland Security; TOM SHANNON, in his
official capacity as Acting Secretary of State;
and the UNITED STATES OF AMERICA,

NOTE ON MOTION CALENDAR:
February 2, 2017

Defendants.

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I. INTRODUCTION

The Service Employees International Union (“SEIU”) respectfully moves for leave to file an amicus curiae brief in support of the State of Washington’s Motion for a Temporary Restraining Order. A copy of the proposed brief is attached as Exhibit A to this motion. The State of Washington does not oppose the filing of this amicus curiae brief. As of the filing of this motion, the United States has not responded to counsel’s request for consent.

II. ARGUMENT

A. Federal District Courts Have Broad Discretion To Allow The Participation Of Amici Curiae

District courts have inherent authority—derived from Federal Rule of Appellate Procedure 29—to grant participation by an amicus curiae. *See Skokomish Indian Tribe v. Goldmark*, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013). This Court has broad discretion to determine whether to permit an amicus brief, *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), and amicus status is generally allowed when “the information offered is timely and useful.” *Ellsworth Assocs. v. U.S.*, 917 F. Supp. 841, 846 (D.D.C. 1996). Amicus participation is especially appropriate where the ramifications of the decision extend beyond the current parties. *Sierra Club v. BNSF Ry. Co.*, 2016 U.S. Dist. LEXIS 124269, at *5 (W.D. Wash. Sept. 13, 2016).

Specifically, courts “normally allow” an amicus brief “when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Youming Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008) (citing *Ryan v. Commodity Futures Trading Comm’n*, 125 F. 3d 1062, 10564 (7th Cir. 1997)); *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003) (same). This assistance to the court may take many forms, including “ideas, arguments, theories, insights, facts or data that are not to be found in the parties’ briefs.” *See N. Mariana Isls. v. United States*, 2009 U.S. Dist. LEXIS 125427, at *3-4 (D.D.C. Mar. 6, 2009).

This Court has granted participation by an amicus in a variety of cases, including those involving challenges to agency action. *See Ctr. for Biological Diversity v. United States EPA*,

1 2014 U.S. Dist. LEXIS 20623, at *30 (W.D. Wash. Feb. 18, 2014). The Court has also granted
2 leave to participate as amici to non-profit organizations, where those organizations had “a
3 particular perspective that may not otherwise be before the court.” *Microsoft Corp. v. United*
4 *States DOJ*, 2016 U.S. Dist. LEXIS 115867, at *27 (W.D. Wash. Aug. 29, 2016).

5 **B. Service Employees International Union Has the Requisite Interest**

6 The Service Employees International Union is an international labor organization
7 representing approximately two million working men and women in the United States and
8 Canada employed in the private and public sectors. In the State of Washington alone, SEIU’s
9 local-union membership exceeds 126,000. Members include public school teachers, janitors,
10 security officers, nurses, and long-term care workers who provide quality healthcare, education,
11 and building services to Washington residents. Many of SEIU’s Washington-resident members
12 are foreign-born U.S. citizens, lawful permanent residents, or immigrants authorized to work in
13 the United States. And many of SEIU’s Washington-resident members have mixed-status
14 families.

15 **C. SEIU Can Provide Helpful Information To The Court That Will Not Duplicate**
16 **Arguments Presented By The Parties**

17 The accompanying amicus brief from SEIU provides additional information showing
18 why the State of Washington has standing to challenge President Donald J. Trump’s January 27,
19 2017 Executive Order (“Executive Order.”). *See* Dkt. No. 17. The amicus brief contains factual
20 information that will assist the Court in resolving the parties’ competing claims on that issue,
21 without duplicating the parties’ arguments. The brief documents that the impact of the Executive
22 Order on the SEIU and its Washington-resident members is profound, and highlights the State’s
23 pressing interest in protecting its residents and preserving its tax base by providing real-life
24 examples of the immediate and irreparable harm that will occur if the Executive Order is allowed
25 to stand.
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1 **D. The State of Washington Has Consented To SEIU’s Filing An Amicus Brief In This**
2 **Case**

3 In determining whether to grant leave to file an amicus brief, this Court also takes into
4 account whether the parties object to the filing. *See, e.g., Cobell*, 246 F. Supp. 2d at 63 (denying
5 leave to file an amicus brief in part because both parties submitted motions in opposition). SEIU
6 satisfies this test at least in part, since the State of Washington has consented to SEIU’s filing a
7 brief. Moreover, even where the parties to an action have objected to the participation of an
8 amicus—which none have here—courts will still evaluate a motion for leave, drawing on the
9 tests set forth in Federal Rule of Appellate Procedure 29(b): “(1) the movant’s interest; and (2)
10 the reason why an amicus brief is desirable and why the matters asserted are relevant to the
11 disposition of the case.” *See Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062,
12 10564 (7th Cir. 1997). As the discussion above demonstrates, SEIU satisfies these standards,
13 since it has a strong interest in this case, an amicus brief from SEIU is desirable, and the matters
14 that it asserts in the brief are relevant to the Court’s disposition of the issues presented.

15 **E. The Amicus Brief Is Timely**

16 The filing of this motion with the accompanying brief is timely. Using the Federal Rules
17 of Appellate Procedure as a guide, the brief of an amicus is due “no later than seven days after
18 the principal brief of the party being supported is filed.” Fed. R. App. P. 29(e); *see also*
19 *Microsoft Corp.*, 2016 U.S. Dist. LEXIS 115867, at *27 (“In the absence of local rules governing
20 the role of amicus curiae, the court will adhere to the applicable rules found in the Federal Rules
21 of Appellate Procedure.”). In this case, the party being supported by SEIU is the State of
22 Washington, and the State of Washington filed its principal brief on Monday, January 30, 2017
23 and its supplemental brief on Wednesday, February 1, 2017. Accordingly, the instant motion and
24 brief are being filed well within the seven day time frame that would apply under the appellate
25 rules. Alternatively, and again drawing on the appellate rules, this Court can exercise its
26 discretion, as it deems necessary and appropriate, and specify a time within which the Plaintiffs
27 may “answer” the amicus brief from SEIU. *See* Fed. R. App. P. 29(e).

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Michelle R. Bennett, michelle.bennett@usdoj.gov

Angelo J. Calfo, angeloc@calfoeakes.com

Marsha J. Chien, marshac@atg.wa.gov

Ann Elizabeth Egeler, annee1@atg.wa.gov

Kymerly K. Evanson, kymerly.evanson@pacificallawgroup.com

Robert W. Ferguson, judyg@atg.wa.gov

Arjun Garg, Arjun.garg@usdoj.gov

Bradley Girard, girard@au.org

Richard B. Katskee, katskee@au.org

Paul J. Lawrence, paul.lawrence@pacificallawgroup.com

Noah Guzzo Purcell, noahp@atg.wa.gov

Patricio A. Marquez, PatricioM@atg.wa.gov

Colleen M. Melody, colleenm2@atg.wa.gov

Kristin W. Silverman, kristins@calfoeakes.com

DATED: February 2, 2017

/s/ Steve W. Berman

Steve W. Berman, WSBA #12536