

No. 17-35105

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF WASHINGTON; STATE OF MINNESOTA,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, President of the United States, et al.
Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Washington, Seattle
The Honorable James L. Robart
No. 2:17-cv-00141-JLR

**SERVICE EMPLOYEES INTERNATIONAL UNION'S MOTION FOR
LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF
PLAINTIFFS-APPELLEES**

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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 Plaintiffs-Appellees. A copy of the proposed brief is attached is submitted herewith. The Defendants-Appellants initially gave blanket consent to the filing of all amicus briefs. However, at 10:34 p.m. PST (1:34 a.m. EST) on February 5, amici were informed that Defendants-Appellants altered their position from a uniform consent for the filing of all amicus briefs, to providing consent solely if the amicus briefs were filed by the deadline for the State of Washington’s brief of 11:59 p.m. PST (2:59 a.m. EST)—*i.e.*, less than an hour-and-a-half after the SEIU received notice of Defendants’ backtracking. Notwithstanding the Department of Justice’s apparent objection, SEIU respectfully submits that its filing of the attached brief is timely, desirable, and worthy of this Court’s consideration.

II. ARGUMENT

The goal of any amicus curiae is “to call the court’s attention to ... facts or circumstances in a matter then before it that may otherwise

escape its consideration.”¹ The fundamental requirements of Rule 29 of the Federal Rules of Appellate Procedure are that an amicus curiae brief be “relevant” and “desirable.”² The proposed brief here satisfies both requirements.

A. This Court Has Broad Discretion To Allow The Participation Of Amici Curiae

Permitting a nonparty to submit a brief as amicus curiae is, “with immaterial exceptions, a matter of judicial grace.”³ Circuit courts, including this Court, have rarely disclosed the considerations weighed when deciding a motion for leave to file an amicus brief. But the Ninth Circuit has recognized that the classic role of an amicus is “assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.”⁴

¹ 4 Am. Jur. 2d, *Amicus Curiae* § 6 (2004).

² Fed. R. App. P. 29(b)(1).

³ *NOW, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000).

⁴ *Miller-Wohl Co., Inc. v. Comm’r of Labor and Indus., Montana*, 694 F.2d 203, 204 (9th Cir. 1982).

B. Service Employees International Union Has the Requisite Interest

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

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

The accompanying amicus brief from SEIU provides additional information showing why the State of Washington has standing to challenge President Donald J. Trump's January 27, 2017 Executive Order ("Executive Order."). The amicus brief contains factual information that will assist the Court in resolving the parties'

competing claims on that issue, without duplicating the parties' arguments. The brief documents that the impact of the Executive Order on the SEIU and Washington residents and others across the nation – including SEIU members – is profound. These immediate, real-world impacts highlight the States' pressing interest in protecting their residents and their tax bases by providing real-life examples of the immediate and irreparable harm that will occur if the Executive Order is allowed to stand.

D. The Amicus Brief is Timely

The filing of this motion with the accompanying brief is timely. Under the Federal Rules of Appellate Procedure, the brief of an amicus is due “no later than seven days after the principal brief of the party being supported is filed.” Fed. R. App. P. 29(e). In this case, the parties being supported by SEIU are the States of Washington and Minnesota, and the States of Washington and Minnesota filed their principal briefs on Sunday, February 5, 2017. The United States has not yet filed its response. Accordingly, the instant motion and brief are being filed well within the seven day time frame that would apply under the appellate

rules. Alternatively, and again drawing on the appellate rules, this Court can exercise its discretion, as it deems necessary and appropriate, and specify a time within which the United States may “answer” the amicus brief from SEIU. *See* Fed. R. App. P. 29(e).

III. CONCLUSION

The Court should therefore exercise its discretion to permit SEIU to file the attached amicus brief. Counsel of record for SEIU is familiar with the scope of the arguments presented by the parties and will not unduly repeat those arguments. Instead, the SEIU draws from its communications with residents from Washington and around the nation – including SEIU members and their families. These communications illustrate the profound, widespread, and irreparable harm the Executive Order has caused and would continue to cause if the District Court’s Temporary Restraining Order were undone.

DATED: February 6, 2017

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 6, 2017.

All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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