

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL VETERANS LEGAL  
SERVICES PROGRAM, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 16-745 (ESH)

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND [PROPOSED] *AMICI CURIAE* BRIEF OF SENATOR JOSEPH LIEBERMAN AND CONGRESSMAN DARRELL ISSA IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY**

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## INTRODUCTION

Pursuant to Local Civ. Rule 7(o)(1)–(2), Senator Joseph Lieberman and Congressman Darrell Issa respectfully move for leave to file the attached brief in support of Plaintiffs’ Motion For Summary Judgment as *amici curiae* in the above captioned case. Plaintiffs consent to the filing of this brief. The undersigned sought the consent of defendant to this motion, but as of the filing of this motion, have received no response to that inquiry.

## ARGUMENT

### **Senator Lieberman and Congressman Issa can provide unique and useful information and perspective to the Court.**

District courts have inherent authority to allow participation as *amicus curiae*. *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008) (quoting *Smith v. Chrysler Fin. Co., L.L.C.*, No. Civ.A. 00-6003(DMC), 2003 WL 328719, at \*8 (D.N.J. Jan. 15, 2003)). And, the Court has broad discretion in deciding whether to grant a third party leave to file an *amicus curiae* brief. *Nat’l Ass’n of Home Builders v. U.S. Army Corps of Eng’rs*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007).

“Generally, ‘a court may grant leave to appear as an *amicus* if the information offered is timely and useful.’” *Ellsworth Assocs., Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (quoting *Waste Mgmt. of Pa., Inc. v. City of New York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995) (internal quotation omitted)). An *amicus* brief should be allowed “‘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.’” *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003) (quoting *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997)).

As the then-Chairman of the United States Senate Committee on Homeland Security and Governmental Affairs and sponsor of the legislation here at issue, the E-Government Act of 2002,

Senator Lieberman has a unique perspective and strong interest in seeing that Act enforced as it was intended. As Chairman of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet, Congressman Issa has examined PACER fees. He also co-founded the Congressional Transparency Caucus and the OpenGov Foundation, an apolitical 501(c)(3), which supports free software solutions that help citizens access government information. Both Senator Lieberman and Congressman Issa can assist the Court with understanding the Congressional intent behind the Act.

### **CONCLUSION**

For the foregoing reasons, Senator Lieberman and Congressman Issa respectfully request that their motion for leave to file the accompanying brief be granted.

Dated: September 5, 2017

*/s/ Mark I. Bailen*

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 5, 2017, I electronically filed the foregoing document with United States Court for the District of Columbia by using the CM/ECF system. I understand that notice and service of this filing to counsel of record for the parties has been made through the CM/ECF system.

Dated: September 5, 2017

*/s/ Mark I. Bailen*

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*Counsel for Amici Curiae Senator Joseph  
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