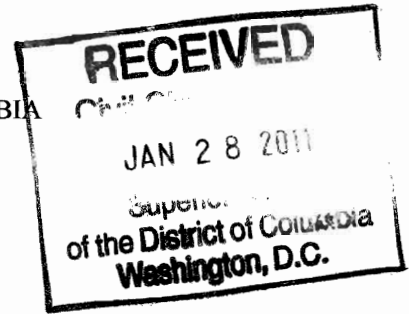


SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION



 STEVEN J. ROSEN,)
)
 Plaintiff)
 v.)
 AMERICAN ISRAEL PUBLIC AFFAIRS)
 COMMITTEE, INC., et. Al.,)
)
 Defendants)

Civil Action No. 2009 CA 001256
 Calendar 12
 Judge Erik P. Christian

SECOND MOTION FOR AUTHOR GRANT F. SMITH FOR LEAVE TO FILE A BRIEF AS
 AMICUS CURIAE

Author Grant F. Smith respectfully moves this Court for leave to file the January 10, 2011 brief as *amicus curiae* over issues raised by evidence he has individually gathered and distributed to the public through articles and books, which has been submitted as evidence in the present defamation lawsuit, but which has been materially misrepresented by the Defendant, and that forms the basis of two criminal complaints currently under consideration by the Internal Revenue Service and Foreign Agents Registration Act section of the US Department of Justice.

On January 19, 2011 the *Defendant's Opposition to Grant Smith's Motion for Leave to File a Brief as Amicus Curiae* noted some basic criteria for determining when such a brief is appropriate, as the District Court has looked to the Seventh Circuit opinion in *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1064 (7th Cir. 1997).¹

¹ See also, *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F.3d 542, 545 (7th Cir. 2003), "No matter who a would-be amicus curiae is, therefore, the criterion for deciding whether to permit the filing of an amicus brief should be the same:

An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or 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. Otherwise, leave to file amicus curiae brief should be denied.

Grant F. Smith meets all of the above criteria for being permitted to file the January 10, 2011 brief. Smith as an individual, on behalf of his publisher and for supporters of the Institute for Research: Middle Eastern Policy where he serves as director of research are not currently represented in the current civil action. The *amicus curiae* has an ongoing interest in two major civil accountability and regulatory actions that are not, as the defendant alleges, "speculative" and that may be adversely affected by decisions in the matter presently before the Superior Court of the District of Columbia. The *amicus curiae* also clearly has highly unique information and perspectives that can assist the court beyond the help that the lawyers for the parties are able or motivated to provide. This includes information submitted as evidence that would not have been publicly available absent actions of the *amicus curiae*. They also include newly declassified documents from multiple sources revealing that the American Israel Public Affairs Committee only exists in its present form due to past illegalities. This information is unique, timely, informative, and of direct probative value in the present suit and future accountability actions.

The core question to be answered in the present case is whether or not the plaintiff was defamed by the defendant when the defendant utilized its influence in the news media to publicly state the plaintiff did not engage in "conduct that AIPAC expects from its employees." Information about the

whether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs. The criterion is more likely to be satisfied in a case in which a party is inadequately represented; or in which the would-be amicus has a direct interest in another case that may be materially affected by a decision in this case; or in which the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide."

Defendant's own character and past conduct, particularly involving its routine handling of classified US government information, is therefore of high relevance to the court.

The *amicus curiae* has for the past decade been gathering information through the Freedom of Information Act and mandatory declassification reviews about the defendant's history and interaction with law enforcement agencies on behalf of interested members of the American public and thousands of readers. The *amicus curiae* has amassed this information in order to prove beyond a reasonable doubt that the defendant has long gathered classified US government information in order to serve its true purpose: acting as a stealth, unregistered foreign agent of the Israeli government.

On November 4, 2009, the *amicus curiae* led a four member delegation to meet with the US National Security Division Chief of the Foreign Agents Registration Unit of the Counterespionage Section at the US Department of Justice.² Present at the meeting were members of the Counterespionage Section, Supervisory Intelligence Research Specialist and US Attorney staff.

The *amicus curiae* presented a 392 page complaint asking that the American Israel Public Affairs Committee be re-regulated as the foreign agent of the Israeli Ministry of Foreign Affairs. The *amicus curiae* revealed to the DOJ documents that were newly declassified in 2008 about how the defendant's predecessor and parent organization, the American Zionist Council, was ordered on November 21 of 1962 to begin registering as an Israeli foreign agent. The American Israel Public Affairs Committee, previously functioning as the AZC's subsidized unincorporated lobbying division, incorporated six weeks after this FARA order in the District of Columbia to take over the AZC's functions as an Israeli foreign agent. The AZC's major sponsoring organizations (Hadassah and the Zionist Organization of America) later became part of AIPAC's executive committee. The Amicus

² See Amicus Curiae's Ex. 1 complaint filed with the DOJ on November 4, 2009 "The American Israel Public Affairs Committee is an Unregistered Foreign Agent of the Israeli Government"

documented that AIPAC only exists in its present configuration as a result of past illegal activities. This is not a matter of, as the Defendant alleges, the *amicus curiae* using the "imprimatur of this Court as a forum to further his personal agenda and unsubstantiated theories about the 'Israel Lobby' and AIPAC" but rather newly established fact of vast public policy consequence. The *amicus curiae* complaint to the Justice Department reveals and documents how, in order to continue serving as an effective stealth foreign agent by informing its foreign principal of early movements inside the US government in order to front-run policy initiatives brought forth in the broader American interest, the defendant has continually received, gathered and distributed classified US government information to Israel and allies in the news media. This filing to the Justice Department therefore provides an important glimpse into why, unlike all other large and influential American charities, AIPAC has had such an ongoing, singular history in trafficking classified US government information.

The Foreign Agents Registration Act office, as mandated under the 1938 FARA, is open to the public for consultation of foreign agent filings and to receive complaints about the activities of suspected unregistered foreign agents. Communications from the *amicus curiae* to the FARA section about AIPAC activities supplementing the complaint have been ongoing, keeping the AIPAC FARA question open.

The *amicus curiae* is concerned that if the defendant succeeds in minimizing and trivializing its past activities by incorrectly claiming "AIPAC was cleared of any wrongdoing" when in fact it never was, and that declassified FBI documents detailing its past patterns of classified information trafficking are "ancient" and "irrelevant to this action" that the *amicus* interest in holding AIPAC accountable under FARA could be subverted through such unwarranted minimization of classified information trafficking. It should be noted that the Supreme Court is currently considering a 1988 case between two

defense contractors and the US government over "state secrets."³ The Defendant's characterization of 1985-1987 FBI investigations of AIPAC for classified information handling as "ancient" or "irrelevant to this action" are therefore spurious but could set a precedent if the court accepts them at face value.

On November 22, 2010 the *amicus curiae* also filed a 1,389 page "13909" complaint with the Internal Revenue Service.⁴ The complaint provides evidence the *amicus curiae* believes should lead to the retroactive revocation of the Defendants tax exempt status.⁵ Like the FARA filing, the *amicus curiae* has used newly declassified documents about AIPAC's long history of handling classified information as proof that it does not function as a bona fide social welfare organization and is therefore ineligible for tax exempt status. As in the Foreign Agents Registration Act complaint, the *amicus curiae* has legitimate concerns that if the defendant succeeds in unduly minimizing its past activities in court that the IRS action, which is only in its initial stages and still soliciting additional information from the *amicus curiae*⁶ could be negatively influenced.

The *amicus curiae* has no personal agenda in, as the Defendant claims, advancing unsubstantiated theories about AIPAC or the "Israel lobby." The *amicus curiae* has, in fact, a strong record of documenting AIPAC activities, substantiating how they harm the public interest, while quantifying appropriate redress and regulation in relevant venues. The *amicus curiae*, by conveying information gathered by separate federal investigative authorities to the appropriate fiscal and foreign

³See

[http://www.aviationweek.com/aw/generic/story_generic.jsp?channel=awst&id=news/awst/2011/01/24/AW_01_24_2011_p35-](http://www.aviationweek.com/aw/generic/story_generic.jsp?channel=awst&id=news/awst/2011/01/24/AW_01_24_2011_p35-284388.xml&headline=Supreme%20Court%20May%20Redraw%20Defense%20Contracts%20Rules)

284388.xml&headline=Supreme%20Court%20May%20Redraw%20Defense%20Contracts%20Rules

⁴ See Amicus Curiae's Ex. 2 "13909 Tax-Exempt Organization Complaint Referral: American Israel Public Affairs Committee (AIPAC) The Case for Revocation of Tax Exemption EIN 53-0217164"

agent regulatory authorities, has served as an indispensable "bridge" for sharing information across bureaucratic government "silos" in the interest of advancing the broader public good.

The important questions raised by nature involve many indirect parties to the present case. For example, the Defendant has recently brought an insurance adjuster into arbitration proceedings. Most insurance contracts specify that "any loss to which a contributing cause was the Insured's being engaged in an illegal occupation or illegal activity" are excluded from damage claims. If the Defendant intends to have potential losses over litigation and damages settlement be paid to the Plaintiff from an insurance contract, it could unjustly raise liability insurance coverage rates of many forprofit and nonprofit US corporations in good standing. Inappropriate benefit payments could also negatively impact US taxpayers if the Defendants reinsurers include entities bailed out by the US government such as AIG. It is therefore of high interest to taxpayers, insurers, liability insurance policy holders and other stakeholders that the Defendant's attempts to minimize its relevant history in order to position the entire proceeding as merely that of "employer v. disgruntled former employee" through misrepresentations and stonewalling outside stakeholder input be formally challenged. For the foregoing reasons, Grant F. Smith respectfully requests that this Court GRANT this Motion and accept the January 10, 2011 amicus curiae brief instant.

Respectfully submitted
Grant F. Smith,



CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion, was served on counsel for the Plaintiff and Defendants at the address set forth below by regular United States mail, this 28th day of January, 2011.

David H. Shapiro
SWICK & SHAPIRO
1225 Eye Street NW
Suite 1290
Washington, DC 20005
Tel. 202.842.0300
Fax 202.842.1418
email dhshapiro@swickandshapiro.com

Attorney for the Plaintiff

and

Thomas L. McCalley and
Allie M. Wright
CARR MALONEY P.C.
2000 L. Street N.W.
Suite 450
Washington, DC 20036
tlm@carrmaloney.com
amw@carrmaloney.com

Attorneys for the Defendant

Grant F. Smith,



SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

| | | |
|---|---|---------------------------------|
| STEVEN J. ROSEN, |) | |
| |) | |
| Plaintiff |) | |
| v. |) | Civil Action No. 2009 CA 001256 |
| |) | Calendar 12 |
| AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE, INC., et. Al., |) | Judge Erik P. Christian |
| |) | |
| Defendants |) | |
| |) | |

INDEX TO EXHIBITS SUBMITTED BY AMICUS CURIAE

The following is an index to the exhibits submitted by the amicus curiae. It is submitted to substantiate claims about the Defendants history and that related law enforcement actions are affected by the current action.

| Exhibit | DESCRIPTION |
|---------|--|
| 1 | Complaint filed with the Department of Justice on November 4, 2009 by the <i>amicus curiae</i> "The American Israel Public Affairs Committee is an Unregistered Foreign Agent of the Israeli Government" |
| 2 | 13909 Tax-Exempt Organization Complaint Referral filed by the <i>amicus curiae</i> with the IRS on November 22, 2010 "American Israel Public Affairs Committee (AIPAC) The Case for Revocation of Tax Exemption EIN 53-0217164" 1330 page appendix available upon request. |
| 3 | December 2, 2010 IRS letter to <i>amicus curiae</i> confirming complaint receipt and soliciting additional information. |

Respectfully submitted
Grant F. Smith,

A handwritten signature in black ink, appearing to read "Grant F. Smith", with a long horizontal stroke extending to the right.A large, solid black rectangular redaction covering several lines of text.