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SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

STEVEN J. ROSEN Plaintiff v. AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE, INC., *et. al.* Defendants	:	Case No.: 2009 CA 001256 B Judge Erik Christian Next Event: Pre-trial Conference Due: April 19, 2011

DEFENDANTS' OPPOSITION TO GRANT SMITH'S MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

Defendants, the American Israel Public Affairs Committee, Inc. and Patrick Dorton, through counsel, Carr Maloney P.C., submit this Opposition brief in response to the Grant Smith's Motion. Defendants respectfully request that the Court deny Grant Smith's Motion Leave to File a Brief as Amicus Curiae because he has not stated any cognizable interest in Mr. Rosen's defamation claim, and because his proposed brief does not offer any unique relevant information to assist the Court. In support of their Opposition, Defendants state as follows:

I. STANDARD OF LAW

Although there is little in the way of reported cases in the Superior Court regarding the legal standard for filing *amicus curiae* briefs, the United States District Court for the District of Columbia has had occasion to opine on the discretion of a trial court to entertain an *amicus* brief. "An amicus curiae, defined as 'friend of the court,' Black's Law Dictionary 7th ed.1999 at 83, does not represent the parties but participates only for the benefit of the Court." *U.S. v. Microsoft Corp.*, 2002 WL 319366, at *2 (D.D.C. 2002). In *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008), the court stated, "District courts have inherent authority to

appoint or deny *amici* which is derived from Rule 29 of the Federal Rules of Appellate Procedure."[1] (*citing Smith v. Chrysler Fin. Co., L.L.C.,* 2003 WL 328719, at *8 (D.N.J. Jan.15, 2003); and *Sierra Club v. Fed. Emergency Mgmt. Agency,* 2007 WL 3472851, at *3 (S.D. Tex. Nov.14, 2007)(finding no statute, rule or controlling case defines a federal district court's power to grant or deny leave to file amicus brief)).

The *Jin* court noted, "[i]t is solely within the court's discretion to determine the fact, extent, and manner of the participation." 557 F. Supp. 2d at 136 (quoting *Cobell v. Norton,* 246 F.Supp.2d 59, 62 (D.D.C. 2003))(internal citations omitted). Setting forth basic criteria for determining when such a brief is appropriate, the District Court looked to the Seventh Circuit opinion in *Ryan v. Commodity Futures Trading Comm'n,* 125 F.3d 1062, 1064 (7th Cir. 1997).[2]

> 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 an *amicus curiae* brief should be denied.

II. ARGUMENT

As is plain from the Mr. Smith's motion and his proposed amicus brief, his request meets none of these criteria. To begin, Mr. Rosen is represented by counsel and the Defendants' are

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[1] See *Boumediene v. Bush*, 476 F.3d 934, 935 (D.C. Cir. 2006), "Federal Rule of Appellate Procedure 29(a) provides that [a]ny [non-governmental] amicus curiae may file a brief only by leave of court *or if the brief states that all parties have consented to its filing.* (emphasis added) ... Federal Rule 29(b) further provides that [t]he motion must be accompanied by the proposed brief and state: (1) the movant's interest; and (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case." (internal citations omitted).

[2] 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: 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."

not aware of any claims of incompetence asserted by Mr. Rosen. Second, Mr. Smith has not indicated how he has an interest in this case because he has not articulated any case that is pending that may be affected by a decision in this case. To the contrary, he only references purely speculative assertions of "future civil actions."[3] Third, there is nothing unique or informative in Mr. Smith's "interpretation" of public documents from decades past, which have no probative value, let alone any relevance in this defamation case.

Mr. Smith seeks to use the imprimatur of this Court as a forum to further his personal agenda and unsubstantiated theories about the "Israel Lobby" and AIPAC. His previous research and biased opinions regarding AIPAC's history do not confer upon him any special standing or perspective of matters relevant to this case. Mr. Smith does not present any special understanding of information that is either beyond those of the lawyers involved in this case, or beyond that of the Federal Investigative authorities that cleared AIPAC of any wrongdoing with respect to the very matters raised by Mr. Smith in his proposed brief.

Mr. Smith does not proffer any information that has any relevance or bearing on whether the statement issued in 2008 was true, and his proposed amicus brief does not address the vast majority of the undisputed facts, which establish that the statement of opinion at issue was accurate and was made in good faith, without malice, in 2008. Simply put, Mr. Smith does not present the Court with any information that would be even remotely useful to the Court in resolving this defamation action.

Mr. Smith has no tangible interest in this case, he presents no reason why his amicus brief is desirable, and states no cognizable reason as to why the amicus brief has any relevance to the disposition of Mr. Rosen's defamation claim. *Jin*, 557 F. Supp. 2d at 137 (*citing Neonatology Assocs. P.A. v. Comm'r*, 293 F.3d 128, 130-31 (3rd Cir. 2002)).

[3] Mtn. for Leave to File Amicus Brief at 2.

For the forgoing reasons Defendants respectfully request that this Honorable Court deny Mr. Grant Smith's motion for leave to file an amicus brief. A proposed Order is attached.

Respectfully submitted,

CARR MALONEY P.C.

By: /s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of January, 2011, I will electronically file the foregoing with the Clerk of the Court using the CaseFile Express system, which will then send a notification of such filing to David H. Shapiro, attorney for Plaintiff. I will then send a copy, via email and US Mail, first class, postage prepaid to:

Grant Smith
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202.342.5439
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/s/
Allie M. Wright

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ORDER

Upon consideration of the Motion for Author Grant F. Smith for Leave to File a Brief as Amicus Curiae and Defendants' Opposition thereto, it is, this _____ day of January 2011;

ORDERED, that the Motion for Leave to File a Brief as Amicus Curiae is DENIED.

SO ORDERED.

_____
Judge Erik Christian

cc: David H. Shapiro
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