

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Dawn Mitchell,

Appellant,

vs.

Aitkin County, et al.,

Appellees.

Appeal from the United States District Court
for the District of Minnesota – Minneapolis
(13-cv-02167-JNE)

**APPELLEE CITY OF SAINT PAUL’S MEMORANDUM IN OPPOSITION
TO MOTION OF ELECTRONIC PRIVACY INFORMATION CENTER FOR
LEAVE TO FILE AMICUS CURIAE**

INTRODUCTION

Electronic Privacy Information Center (“EPIC”) has moved this Court pursuant to Fed. R. App. P. 29(b) for leave to file an *amicus* brief in the above-captioned matter. Federal Courts have broad discretion in allowing participation as *amicus curiae*. See, e.g., *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). Since it is considered a privilege to be heard *amicus*, the Court may grant or refuse leave according to whether it determines the information offered is timely

and useful. “Historically, *amicus curiae* is an impartial individual who suggests the interpretation and status of the law, gives information concerning it, and advises the Court in order that justice may be done, rather than to advocate a point of view so that a cause may be won by one party to another.” *Ass’n for Restoration of Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999).

In exercising discretion to accept an *amicus curiae* brief, the Court “considers such factors as ‘whether the parties oppose the motion, the strength of information and argument presented by the potential *amicus curiae*’s interests, . . . the adequacy of the representation, and . . . perhaps most importantly, the usefulness of information and argument presented by the potential *amicus* to the court.’” *Advanced Systems Technology Inc. v. The United States*, 69 Fed. Cl. 335, 337 (Fed. Cl. 2006); quoting, *Wolfchild v. United States*, 62 Fed. Cl. 521, 536 (Fed. Cl. 2004).

EPIC requested consent from Appellees to file its *amicus curiae* brief, and that request was denied. Appellee City of Saint Paul submits this response in opposition of the request by EPIC to file an *amicus curiae* on the following grounds: 1) EPIC’s interest in this litigation is partisan; 2) the parties are adequately represented by legal counsel; 3) the arguments advanced by EPIC are duplicative and irrelevant to this lawsuit; and 4) EPIC fails to provide any unique

information or perspective that can assist the Court beyond the arguments the parties are able to provide. Accordingly, the City of Saint Paul requests that EPIC's leave to file an *amicus* brief be denied.

I. EPIC'S INTEREST IN THIS LITIAGTION IS PARTISAN.

EPIC asserts that its brief is offered in support of Appellant's position, which itself forms sufficient basis for its rejection. "The term 'amicus curiae' means friend of the court, not friend of a party." *United States v. Michigan*, 940 F.2d 143, 164-54 (6th Cir. 1991).

EPIC's position is intertwined with that of Appellant's and offers an unfair extension to the brief submitted by Appellant which should not be permitted. This litigation is already comprised of thorough briefing by numerous different entities involved in the case. EPIC's partisan arguments in support of Appellant do not aid this Court, but rather, gives Appellant a larger platform to present her positions. EPIC's brief stepsvoutside of the purpose of an *amicus* brief and the City of Saint Paul requests that it not be allowed.

II. THE PARTIES ARE ADEQUATELY REPRESENTED.

"An amicus brief should normally be allowed when a party is not represented competently or is not represented at all," otherwise it is superfluous and should be denied. *See Ryan v. Commodity Futures Trading Com'n v. Ill. Bell Tel. Co.*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J.)

Although Appellant has consented to the filing of the *amicus* brief, she is adequately represented by at least four experienced attorneys from the Sapientia Law Group. Appellant’s counsel have been active in this litigation from its inception and have addressed all of the relevant issues in the briefing and arguments made to the Court. Thus, Appellant’s position is sufficiently represented and EPIC’s brief does not benefit this Court beyond what has already been submitted.

III. THE ARGUMENTS PRESENTED BY EPIC ARE DUPLICATIVE AND IN LARGE PART IRRELEVANT TO THE PRESENT CASE BEFORE THE COURT.

The court in *Voices for Choice v. Ill. Bell Tel. Co.*, 339 F.3d, 542, 544 (7th Cir. 2003), stated:

The reasons for the policy [of denying or limiting *amicus* status] are several: judges have heavy caseloads and therefore need to minimize extraneous reading; *amicus* briefs, often solicited by parties, may be useful to make an end around court-imposed limitations on the length of parties briefs; the time and other resources required for the preparation and study of, and response to, *amicus* briefs drive up the cost of litigation; and the filing of an *amicus* brief is often an attempt to inject interest group politics into the federal appeals process.

Voices for Choice, at 544.

The *amicus* brief submitted by EPIC only reiterates the same arguments presented by Appellant. Like Appellant, EPIC urges the Court to apply the “discovery rule” as opposed to the “occurrence rule” to the four year statute of limitations for federal statutory claims under 28 U.S.C. § 1658(a) (2012). EPIC

cites no new authority or arguments in support of its position. In fact, EPIC cites the same cases as Appellant in her briefing to the Court and offers only conclusory remarks about what rule EPIC considers will best further the purpose of the DPPA.

EPIC provides the same historical information for the enactment of the DPPA and its purpose. Moreover, it generally recites portions of the DPPA statute. There is no in-depth analysis or anything different than what has already been argued by Appellant. EPIC raises concerns to support its position that are not at issue in this appeal.

EPIC spends more than half of its brief describing the risk individuals have for identity theft as a result of the misappropriation of “highly restricted personal information” collected by state DMVs. Appellant does not allege that her “highly restricted personal information,” such as her social security number or medical information, were accessed or used. Appellant also does not allege that she was the victim of identity fraud. Although the identity fraud issues focused on by EPIC are important, such issues and the arguments related to them are not pertinent to this appeal.

IV. EPIC OFFERS NO UNIQUE INFORMATION.

An *amicus* brief may be allowed by the court when it provides unique information or perspective that can help the court beyond the help that lawyers for the parties are able to provide. *Ryan*, 125 F.3d at 1063. The issues in this appeal

have been extensively explored by the parties. EPIC's brief does not add any value or insight into the law beyond what the numerous parties can provide to this Court.

EPIC is a political interest group that seeks to further its agenda for combatting identity theft, which is not at issue in this case, and seeks the creation of a breach notification system. The suggested remedial measures are not relevant or appropriately brought before the Court.

EPIC's brief is nothing more than a tangential expansion of what has already been provided to the Court and therefore, the City of Saint Paul requests that the Motion for Leave to File be denied.

CONCLUSION

The role of *amicus curiae* is to assist the Court in determining relevant legal issues. For the reasons set forth above, the admittance of EPIC's *amicus curiae* brief would not further this purpose. Accordingly, Appellee City of Saint Paul respectfully requests that this Court deny EPIC's Motion for Leave to File *Amicus* Brief.

Dated: June 12, 2014

Respectfully submitted,

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