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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
KENNETH J. MURPHY
CLERK

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST DIV. COLUMBUS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil Action 2:99-CV-1097
Judge Holschuh
Magistrate Judge King

CITY OF COLUMBUS, OHIO,
et al.,

Defendants.

US v. City of Columbus



PN-OH-001-028

OPINION AND ORDER

This is an action for injunctive and declaratory relief, instituted under the provisions of 42 U.S.C. §14141, in which the United States alleges that officers of the Columbus Division of Police have engaged in a pattern or practice of conduct violative of federal law, and that the defendant city has tolerated the alleged misconduct by failing to implement adequate policies, training, supervision, monitoring and incident investigation procedures. On August 3, 2000, the United States Magistrate Judge issued a *Report and Recommendation* recommending that the defendants' motions to dismiss and for judgment on the pleadings be denied on the condition that the United States amend the complaint. *Report and Recommendation* (August 3, 2000). The defendant city thereafter filed objections to the *Report and Recommendation*, as did the plaintiff United States. This matter is now before the Court on the motions for leave to participate as *amici curiae* filed on behalf of fourteen (14) United States Representatives and by the Grand Lodge of the Fraternal Order of Police. Neither the plaintiff nor the defendant FOP

115

objects to either motion, so long as they are granted an opportunity to respond to any *amici* memoranda; the defendant city objects to the motions.

The United States Court of Appeals for the Sixth Circuit has characterized leave to appear as *amici* in a case as a matter of privilege committed to "the sound discretion of the court. ..." *United States v. State of Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). Grant of leave to appear as *amici* is appropriate where such parties have "an important interest and a valuable perspective on the issues presented. ..." *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997); *United States v. State of Michigan*, 940 F.2d at 146. Traditionally, *amicus* status has been appropriately accorded to a movant who is manifestly able "to assist the court by giving information, or otherwise, or who conduct[s] an investigation or other proceeding on request or appointment therefor by the court." *United States v. State of Michigan*, 940 F.2d at 164. The purpose of *amicus* status is to "provide impartial information on matters of law about which there [is] doubt, especially in matters where there is public interest." *Id.*, citing *Miller-Wohl Co. v. Comm'r of Labor & Indus., State of Montana*, 694 F.2d 203, 204 (6th Cir. 1982). At the same time, case law has also recognized *amicus* status as a means of providing "a very limited adversary support of given issues through brief and/or oral argument." *Id.*, at 165. Factors relevant to the determination of *amicus* status include whether or not the proffered information "is timely, useful, or otherwise necessary to the administration of justice." *Id.*

As is manifest from the record, this case requires, for the

first time, an authoritative judicial interpretation of 42 U.S.C. §14141. The issues presented by this action are matters of great public interest and concern, both to the parties, to the proposed *amici*, and to the public at large. Although not all the movant members of Congress occupied such positions at the time the statute was promulgated, these proposed *amici* identify themselves as sharing "a particular interest in police accountability." *Motion for Leave to Participate as Amici Curiae*, at 2. It is their position that the *Report and Recommendation* incorrectly imports into the statute a "policy or custom" limitation. *Id.* The Grand Lodge of the Fraternal Order of Police, which purports to speak for its national membership and not just for those members represented by the defendant union, seeks to submit an *amicus* brief "in support of the positions of FOP and the City." *Motion of Grand Lodge of the Fraternal Order of Police to Participate as Amicus Curiae*, at 3. Both of the movants have tendered, in conjunction with their motions, their proposed *amici* briefs.

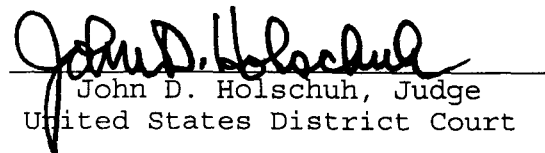
The Court concludes that the proposed *amici*, while supportive of the respective positions of the adversaries already parties to the litigation, are nevertheless in a position to provide to the Court information or a perspective that can assist the Court in addressing the important issues presently before it in this case. Moreover, the *amici* have submitted their tendered briefs for consideration by the Court in conjunction with the parties' objections to the *Report and Recommendation*. Although the parties have been granted an opportunity to respond to any *amici* memoranda, *Order* (September 29, 2000), grant of leave to participate as *amici* will not materially delay the resolution

of the parties' objections to the *Report and Recommendation*.

Under these circumstances, then, the Court concludes that the motions for leave to participate as *amici curiae* are meritorious and they are therefore GRANTED.

The Clerk shall file the tendered *amici* memoranda. Consistent with the Magistrate Judge's Order of September 29, 2000, each party may have ten (10) days, including intervening weekends and holidays, to respond to the memoranda of the *amici*. The parties may have seven (7) days thereafter to reply. If the parties need more time to respond, they may file a motion for an extension of these deadlines.

IT IS SO ORDERED.


John D. Holschuh, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

UNITED STATES OF AMERICA

Plaintiff,

vs.

CITY OF COLUMBUS OHIO,
et al.,

Defendants.

Civil No. C2-99-1097

BRIEF OF AMICUS CURIAE GRAND LODGE OF THE FRATERNAL
ORDER OF POLICE
IN SUPPORT OF THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS

*Before the Honorable District Judge Holshuh and
the Honorable Magistrate Judge King*

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No. C2-99-1097
)	
v.)	Judge Holschuh
)	
CITY OF COLUMBUS, OHIO, et al..)	Magistrate Judge King
)	
Defendants.)	
)	

BRIEF OF AMICI CURIAE IN SUPPORT OF
UNITED STATES'S OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT

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