NO. 11-336

IN THE

Supreme Court Of The United States

JOHN M. CORBOY, ET AL.,

Petitioners,

v.

DAVID M. LOUIE, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Hawaii

OBJECTION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF OF THE CENTER FOR EQUAL OPPORTUNITY AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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Pursuant to Rule 37.5, the County of Maui and the County of Hawaii jointly and respectfully submit their objection to the Motion of The Center for Equal Opportunity For Leave to File Amicus Curiae Brief.

On January 21, 2010, this Court denied Petitioners' previous petition for writ of certiorari in this matter.[1] As a result, it is not entirely surprising that Petitioners have since sought the assistance of its allies whom now seek to file amicus curiae briefs.[2]

[1] The petition was related to the denial of injunctive relief. Although the petition was filed in the same matter, the caption at the time was John M. Corboy, et al. v. Mark J. Bennett, et al., No. 09-1256. David M. Louie has since been substituted for Mark J. Bennett after being sworn in as the Attorney General for the State of Hawaii.

[2] CEO is only one of several other entities which are seeking to file amicus briefs in this matter.

However, despite Petitioners' best efforts to make this matter appear more important and legally significant than it is, the issue before this Court is quite narrow and simple; whether Petitioners have standing. Given the narrow focus of the inquiry, lengthy briefs from Petitioners' allies are simply unnecessary and do not satisfy the strict requirements for submitting amicus curiae briefs.

Importantly, CEO fails to articulate a sufficient basis to submit an amicus curiae brief and its proposed brief simply mirrors Petitioners' brief.[3] CEO claims that the Hawaiian Homes Commission Act is discriminatory and that the Supreme Court of Hawaii erred when it found Petitioners lack standing.[4] These are precisely the same arguments made by Petitioners. CEO's involvement in this matter would contribute absolutely nothing of which the Court has not already been made aware. As a result, CEO's motion should be denied. See, 4 Am. Jur. 2d Amicus Curiae § 8 (" . . . leave to file will be denied where there is no indication that the parties to the lawsuit and those persons who have already been granted permission to file an amicus brief will not adequately present all relevant legal arguments and it does not appear that the applicant is interested in any other case which will be affected by the decision.")

As the Seventh Circuit Court of Appeals has aptly noted:

> The vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the arguments made in the litigants' briefs, in effect **merely extending the length of the litigant's brief. Such amicus briefs should not be allowed**. **They are an abuse**. The term **"amicus curiae" means friend of the court, not friend of a party**. *U.S. v. Michigan*, 940 F.2d 143, 164-65 (6th Cir.

[3] According to CEO's website, www.ceousa.org, CEO is "the nation's only conservative think tank devoted exclusively to issues of race and ethnicity."

[4] CEO, like Petitioners, fails to recognize a key infirmity in their case. The leases awarded under the Hawaiian Homes Commission Act are subject to numerous restraints on alienation and use. See, HHCA § 208. Petitioners own properties in fee simple, which are not subject to these restrictions. There is no logical reason why the fee simple properties owned by Petitioners should be subject to the same tax rate applicable to the severely restricted leasehold interests.

> 1991). We are beyond the original meaning now; an adversary role of an amicus curiae has become accepted. Id. at 165. But there are, or at least there should be, limits. Cf. *New England Patriots Football Club, Inc. v. University of Colorado*, 592 F.2d 1196, 1198 n. 3 (1st Cir. 1979). **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. See, e.g., *Miller-Wohl Co. v. Commissioner of Labor & Industry*, 694 F.2d 203 (9th Cir. 1982) (per curiam). Otherwise, leave to file an amicus curiae brief should be denied (emphasis added).
>
> *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063, 125 F.3d 1062 (7th Cir. 1997).

Therefore, as the Seventh Circuit eloquently stated, the submission of an amicus curiae brief is only permitted under certain circumstances, such as when the party may be affected by the decision or a current party is not competently represented by counsel. This Court agrees with the Seventh Circuit and reached a similar conclusion in *Northern Securities Co. v. U.S.*, 191 U.S. 555, 555-556, 24 S.Ct. 119 (1903). In *Northern Securities*, this Court denied leave to file an amicus brief because the applicant was not interested in any other case which would be affected by a decision in the current case and the parties were represented by competent counsel.

Not surprisingly, CEO fails to argue Petitioners' counsel is incompetent or that it will be adversely affected by a decision in the present case. Instead, CEO merely argues it is "dedicated to the idea that citizens . . . should be treated equally." However, wanting to shape the outcome of this case fails to provide a sufficient basis to file an amicus brief.

Furthermore, even if CEO could articulate a proper basis to file an amicus brief, its brief does not contain any new information and simply repeats the same arguments that Petitioners

have already made. Merely repeating the same arguments which have been made represents a burden upon this Court and provides an independent basis to deny the filing of an amicus brief. Rule 37.1 states:

> An amicus curiae brief that brings to the attention of the Court relevant matter **not already brought to its attention** by the parties may be of considerable help to the Court. **An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored** (emphasis added).[5]

There can be little doubt that CEO's amicus brief fails to provide any additional information for this Court. As a result, it represents a burden to this Court and therefore, this Court should not hesitate in denying the instant motion.

Respectfully submitted, October 24, 2011.

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[5] This is consistent with Rule 37.2(b) which notes that motions for leave to file an amicus brief are "not favored."

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was duly served upon the following parties by electronic mail and by depositing same in the U.S. mail, postage prepaid, at their last known addresses:

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I further certify that all parties required to be served have been served.

DATED: Wailuku, Maui, Hawaii, October 24, 2011.

By _____
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