

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS**

MISSOURI PET BREEDERS ASSOCIATION; )  
STARFISH VENTURES, INC. d/b/a )  
Petland of Hoffman Estates; DAN STAR, )  
and JANET STAR; HAPPINESS IS PETS OF )  
ARLINGTON HEIGHTS, INC.; )  
RONALD BERNING; J & J MANAGEMENT, )  
INC. d/b/a Petland of Chicago Ridge ; )  
and JAMES MACIEJEWSKI, )

Plaintiffs, )

v. )

COUNTY OF COOK through the Cook )  
County Board of Commissioners; TONI )  
PRECKWINKLE, in her official capacity )  
as President of the Cook County Board of )  
Commissioners; and DONNA ALEXANDER, in )  
her official capacity as Director of the Cook County )  
Department of Animal & Rabies Control; )

Defendants )

Case No.: 2014 CV 6930

Honorable Matthew F. Kennelly

**OPPOSITION TO MOTION OF THE HUMANE SOCIETY OF THE  
UNITED STATES AS AMICUS CURIAE FOR LEAVE TO FILE A  
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS**

**I. INTRODUCTION**

Plaintiffs oppose Non-Party Humane Society of the United States (“HSUS”) Motion for Leave to File An Amicus Curiae In Support of Defendants’ Motion to Dismiss (“Motion for Leave”). HSUS’s Motion for Leave should be denied because both the Motion and the proposed Amicus filings are procedurally improper.

The proposed brief introduces facts based upon Internet investigations, news releases, and “facts sheets” that nowhere are in the Record or properly considered on a Motion to Dismiss. Furthermore, the Motion is untimely as it comes 6 days before Plaintiffs are set to respond to the Defendants’ 25 page Motion to Dismiss and months after the initial Motion to Dismiss was filed in this case. This Court has already ruled as

follows as to the briefing schedule on the pending Motion to Dismiss: “These are firm dates that will not be extended for any reason.” [Doc. #26]

Furthermore, HSUS cannot meet any of the tests for filing Amicus Curiae briefs in this District: (1) the Defendants are competently represented in this litigation; (2) HSUS has not demonstrated that it has an interest in any other case in which it is a party that may be affected by this Court’s decision of Defendants’ Motion to Dismiss; (3) HSUS’s proposed amicus brief does not present unique information or perspective that can assist the Court in resolving the Motion to Dismiss in a way beyond the abilities of Defendants’ litigation counsel; and (4) HSUS’s proposed amicus brief would unfairly prejudice Plaintiffs.

## **II. ARGUMENT**

### **I. The Motion Is Procedurally Improper and Untimely.**

While HSUS wants to weigh in on the pending Motion to Dismiss, it has not followed the most basic of rules that govern resolution of such a motion. A Motion to Dismiss must be decided based upon the allegations of the Amended Complaint. *Levenstein v. Salafsky*, 164 F.3d 345, 347 (7<sup>th</sup> Cir. 1998); *Achey v. BMO Harris Bank, N.A.*, No. 13 C 7675, 2014 WL 4099139, at \*3 (N.D. Ill. Aug. 19, 2014); *Macias v. Bakersfield Rest., LLC*, No. 13 C 4300, 2014 WL 4057449, at \*3 (N.D. Ill. May 28, 2014). HSUS, however, cites throughout its brief to many news releases on its Internet site, “fact sheets”, investigations, and other matters that nowhere would ever be allowed in deciding a Motion to Dismiss. (Memorandum, pp. 2-5) For example, while the Amended Complaint alleges facts demonstrating that pet shops are not the cause of shelter overcrowding and provide health and societal benefits, HSUS asserts to the

contrary that it has conducted “numerous investigations connecting pet stores to puppy mills”, claims that consumers have “no real understanding” of where its animals come from, and that there is “emotional trauma” associated with pet shop sales. (Amicus, p. 4) Such factual assertions are patently improper in a Motion to Dismiss. They are also inadmissible as they are based on, at most, Internet citations and constitute hearsay.

HSUS’s Motion also is late. It was filed 6 business days before the Plaintiffs’ Response brief is due. The Complaint in this case was filed on September 9, 2014. The Defendants filed their first Motion to Dismiss on October 9, 2014 and the Amended Complaint was filed on November 19, 2014. The Court’s briefing schedule on the Motion to Dismiss the Amended Complaint stated that: “These are firm dates that will not be extended for any reason.” [Doc. #26] Allowing such a late filing, now, is inappropriate and will prejudice the Plaintiffs as their Response brief is largely complete. Given that HSUS is clearly monitoring this litigation, it is beyond understanding why it did not make its proposed filing contemporaneously with the Defendants on December 11, 2014 or even earlier when the initial Motion to Dismiss was filed. Accordingly, HSUS’s Motion is both procedurally improper and untimely.

## **II. The Amicus Does Not Meet The Standard In This Judicial District.**

This Court’s decision of whether to allow the filing of an Amicus Curiae brief is “a matter of judicial grace.” *Nat’l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000). While discretionary as to whether such a brief is allowed, it is well-established that Amicus briefs should not be partisan in nature. *See Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (“The term ‘amicus curiae’ means friend of the court, not friend of the party.”). Amicus briefs injecting

“interest-group politics” into the judicial process are also disfavored. *See Nat’l Org. for Women*, 223 F.3d at 617; *Sierra Club, Inc. v. Envtl. Prot. Agency*, 358 F.3d 516, 518 (7th Cir. 2004) (“Courts value submissions not to see how the interest groups line up, but to learn about facts and legal perspectives that the litigants have not adequately developed.”). As such, “an *amicus* brief should only be permitted” in limited situations. *Jones Day v. Blockshopper LLC*, No. 08 CV 4572, 2008 WL 4925644, at \*6 (N.D. Ill. Nov. 13, 2008) (denying Motion).

By its own admission, the Amicus is partisan in nature. It is highly argumentative and asks as its relief for dismissal of the Amended Complaint. (Amicus, p. 15) HSUS’s 15 page Amicus brief will, should the Court let it be filed, be no “friend of the court” — instead, it will simply duplicate the Defendants’ 25 page argument and disparage the Plaintiffs. Courts in this District have refused Amicus briefs for this reason alone. *See Leigh v. Engle*, 535 F. Supp. 418, 420 (N.D. Ill. 1982) (“[I]f the proffer comes from an individual with a partisan, rather than impartial view, the motion for leave to file an amicus brief is to be denied.”); *Kostas Mehmet v. Four Seasons Hotel*, 1985 WL 766, at \*1 (N.D. Ill. April 25, 1985) (“[W]e should be reluctant to hear from amici where, as here, one party objects and the amici are so strongly aligned with the other side such that that side can, in effect, file multiple briefs in support of its position.”).

The role of the district court as the ultimate finder of fact heightens this sensitivity. *See Tiara Corp. v. Ullengerg Corp.*, 1987 WL 16612, at \*2 (N.D. Ill. September 1, 1987) (“Since the principal function of the district court is resolving issues of fact, district courts should go slow in accepting amicus briefs without the joint consent of the parties unless the amicus has a special interest or unless the court feels existing

counsel need assistance.”); *Leigh*, 535 F. Supp. at 422 (noting the “unfairness” that would result from partisan amicus briefs during summary judgment).

The Amicus trips all of these wires: a partisan brief from interest groups offered to a district court. *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (“The term ‘amicus curiae’ means friend of the court, not friend of a party.”) (motion denied). “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 litigants’ brief. Such amicus briefs should not be allowed.” *Id.*

**1. Defendants are Represented Competently by Legal Counsel.**

Here, Defendants are represented by competent counsel. HSUS does not argue otherwise. Cook County has a \$3.5 billion budget and a team of lawyers at its disposal to assist it in its litigation. Defendants have timely filed a competent 25 page Memorandum requesting dismissal of this case.

**2. HSUS Has Not Demonstrated That It Has An Interest In Any Other Case That May Be Affected By the Court’s Decision on Defendants’ Motion to Dismiss.**

HSUS clearly cares greatly about the issues set forth in this case. However, as set forth above, HSUS is an advocacy group which is an inappropriate party to file an Amicus brief. It has no personal involvement in this case. HSUS identifies no other litigation in which it is a party that will be impacted by the outcome of this case. As such, its involvement is not proper.

**3. HSUS’s Proposed Amicus Brief Merely Restates Defendants’ Arguments and Does Not Present Unique Information or Perspective That Can Be Considered On A Motion To Dismiss.**

HSUS provides no relevant information that is appropriately considered in a Motion to Dismiss that is unavailable to counsel and can assist the Court in its decision beyond the abilities of Defendants' competent, experienced litigation counsel. When the improper factual assertions are taken away from the Memorandum, the legal arguments are largely duplicative of those arguments already made in the case. Such Amicus briefs have been absolutely rejected by the Seventh Circuit. *Nat'l Org. for Women*, 223 F.3d at 617 ("The policy of this court is, therefore, not to grant rote permission to file an amicus curiae brief; never to grant permission to file an amicus curiae brief that essentially merely duplicates the brief of one of the parties.") (motion for leave to file amicus briefs denied). The proposed Amicus brief does nothing "more than repeat in somewhat different language the arguments in the brief of the party whom the amicus is supporting." *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003). Although Amicus' proposed brief "contain[s] a few additional citations not found in [Defendants'] briefs . . . essentially [it] cover[s] the same ground". *Id.* Such emphasis by an amicus in favor of one party's analysis is improper and has been roundly rejected by the Seventh Circuit. *See Ryan*, 125 F.3d at 1063.

#### **4. The Proposed Amicus Brief Would Unfairly Prejudice Plaintiffs.**

The proposed Amicus brief does not provide this Court with an unbiased account of the law or facts, and it is acting simply as an advocate for Defendants, not as a friend of the Court. Thus, the proposed Amicus brief essentially provides Defendants two bites at the apple, and unfairly expands the argument in favor of Defendants' position from 25 pages to many more. It also is prejudicial because it interweaves improper factual assertions into a Motion to Dismiss which (as explained above) is improper. Moreover,

the proposed Amicus brief was filed long after Defendants briefed their Motion to Dismiss, and just days before Plaintiffs are due to file their Opposition. Thus, if the Amicus brief is allowed, Plaintiffs would be unfairly prejudiced.

### CONCLUSION

For the foregoing reasons, Plaintiffs respectively request that the Court deny leave for the Amicus briefs to be filed.

Dated: January 12, 2015

Respectfully Submitted,

MISSOURI PET BREEDERS  
ASSOCIATION; STARFISH VENTURES,  
INC.; DAN STAR; JANET STAR;  
HAPPINESS IS PETS OF ARLINGTON  
HEIGHTS, INC., RONALD BERNING; J  
& J MANAGEMENT, INC. and JAMES  
MACIEJEWSKI,

By: /s/ David J. Fish  
One of their Attorneys

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