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September 15, 2000

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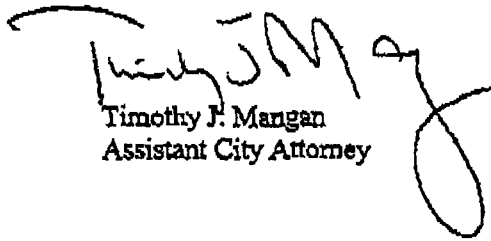
James E. Phillips
52 East Gay Street
P.O. Box 1008
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RE: *United States of America v. City of Columbus, Ohio*
Case No. C2-99-1097

Dear Counsel:

Enclosed please find a time-stamped copy of the Defendant City's Memorandum Contra to the Motion for Leave to Participate as Amici Curiae in the above captioned matter.

Sincerely,


Timothy J. Mangan
Assistant City Attorney

TJM:sw
Enclosure

US v. City of Columbus



PN-OH-001-024

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FILED
KENNETH J. MURPHY
CLERK

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

SEP 15 PM 12:06
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST DIV. COLUMBUS

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF COLUMBUS, OHIO,

Defendant.

Civil Case No. C2-99-1097

JUDGE HOLSCHUH

MAGISTRATE JUDGE KING

**DEFENDANT CITY'S MEMORANDUM CONTRA TO THE MORTION FOR LEAVE
TO PARTICIPATE AS AMICI CURIAE**

Pending before the Court is a Motion For Leave To Participate As Amici Curiae put forth by fourteen members of Congress. In this motion and the attached brief, the amici challenge the Magistrate's findings as discussed in the Report and Recommendation (doc. 57). For the reasons set forth below, defendant City of Columbus [hereinafter "City"] objects to the inclusion of the amici curiae.

I. INTRODUCTION

"The acceptance of amicus briefs is within the sound discretion of the Court," *Donovan v. Gillmor*, 535 F. Supp. 154, 159 (N.D. Ohio 1982) (citations omitted). However, "absent joint consent of the parties, acceptance of an intervenor as amicus curiae should be allowed only sparingly, unless the amicus has a special interest, or unless the Court feels existing counsel need assistance." *Id.* Additionally, admission of an amicus is "depend[ent] upon a finding that the proffered information of amicus is timely, useful, or otherwise necessary to the administration of justice." *United States v. Michigan*, 940 F.2d 143,165 (6th Cir.1991). In the pending matter the

City would ask the Court to consider the following factors when deciding the Motion For Leave To Participate As Amici Curiae.

II. TIMELINESS

Amici curiae are seeking leave to be admitted for the sole purpose of putting forth an argument dealing with the appropriate scope of liability under 42 U.S.C. §14141. The original Motion To Dismiss and Motion for Judgment On The Pleadings have been pending before this Court since February of 2000. The City, Fraternal Order of Police, Capital City Lodge No. 9 [hereinafter "FOP"], and the United States have all had an opportunity to fully brief this issue. On August 3, 2000 the Magistrate Judge issued a Report and Recommendation, objections to which have also been fully briefed by all parties to the case. Only now, seven months after the issue was first presented and after all briefing has been completed, do members of Congress come forward as amici curiae. If the Court were to grant their motion it would spark another round of briefing which would further delay the progression of this case and thereby be prejudicial to the City.

III. INTERESTED PARTIES

"Historically, 'amicus curiae' was defined as one who interposes in a judicial proceeding to assist the court by giving information . . . Its purpose was to provide *impartial* information on matters of law about which there was doubt. The orthodox view of amicus curiae was, and is, that of an *impartial* friend of the court—not an adversary party in interest in the litigation." *United States v. Michigan*, 940 F.2d 143, 164,165 (6th Cir. 1991) (internal quotations and citations omitted) (emphasis in original).

In the current matter, the members of Congress and their attorneys are not acting as true amici, but rather as interested parties seeking a limited right of intervention. Congress has an available means for addressing concerns over the judiciary's interpretation of their statutes, namely the legislative history. Since 42 U.S.C. §14141 has no direct legislative history, the statutory construction problem falls within the realm of the judiciary. The particular view of fourteen members of the House of Representatives, many of whom were not even members of the House when this Bill was passed, has no place in this determination. The legislative branch of government has a strict and time-tested method for enacting laws and expressing legislative intent regarding those laws. Once the law is passed, however, it is the job of the judiciary to determine the precise legal meaning of the statute. To allow one small segment of the legislature to engage in post-enactment debate when the matter is under consideration by the courts is to disregard the fundamental concept of separation of powers. Moreover, fourteen members of the House cannot speak for the entire legislative branch. Just as these members have their view of how 42 U.S.C. §14141 should be interpreted, other members of the House of Representatives or Senate would presumably hold their own, differing views. Were the Court to grant leave to allow these fourteen members of the House to act as amici curiae, it would cry out for additional input from other members of Congress thereby creating a mini floor debate within this lawsuit. This would have a profound effect on delaying the litigation while adding little to the question of law at hand.

Additionally, it appears that the amici's brief, offered in support of the position previously taken by the Justice Department, may be just another opportunity to restate the Department of Justice's position. It is authored by a former trial attorney for the Justice Department's Civil Rights

Division and her husband. In fact, counsel for the amici was trial attorney for the Department of Justice in a similar case brought against the police department of the City of Steubenville, Ohio. Throughout the course of this litigation, the Department of Justice has presented its position on the issue of vicarious liability; amici should not be given an opportunity to echo those arguments.

IV. ADEQUATE REPRESENTATION

The Federal Government's position has been adequately represented by the United States Department of Justice. 42 U.S.C. §14141, as passed by Congress in 1994, grants power to the Attorney General to seek injunctive relief for a pattern or practice of unconstitutional misconduct. During the course of this litigation, the Department of Justice has fully and adequately represented the position that section 14141 imposes vicarious liability against a municipality. As the court said in *Donovan v. Gillmor, supra* at 159, "the Court is of the opinion that counsel for both parties are more than adequately representing the interest of their clients and that counsel do not need supplementing assistance."

In the present litigation, the brief submitted by the amici along with their Motion For Leave does not present any new or novel approach to how section 14141 should be interpreted. Rather, it merely rehashes arguments, albeit with a slightly different spin, already pending before this Court. This is not a brief of an outside group seeking to defend an interest that has previously gone without representation; rather it is an attempt by an interested party to restate a position that has already been fully briefed by the parties to this litigation.

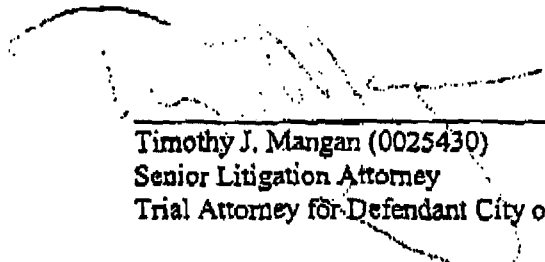
Since the interest that Congress purports to represent in the Motion For Leave has already been fully represented by the Department of Justice, this Court should deny the motion of amici curiae.

V. CONCLUSION

For the foregoing reasons, the City requests that the Motion For Leave To Participate As Amici Curiae, submitted to this Court by fourteen members of Congress and their counsel, be denied.

Respectfully submitted,

CITY OF COLUMBUS, DEPARTMENT OF LAW
JANET E. JACKSON, CITY ATTORNEY



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CERTIFICATE OF SERVICE

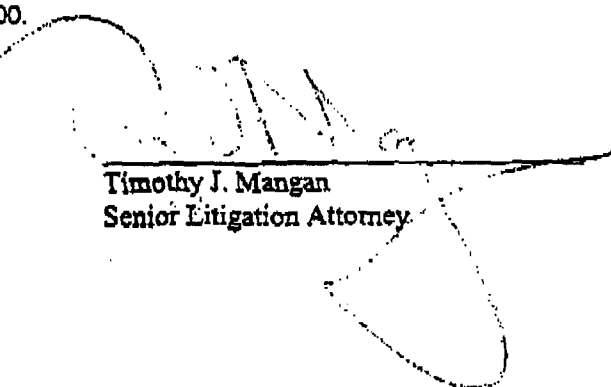
This is to certify that a copy of the foregoing was sent by regular U.S. Mail, postage prepaid, to:

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Samuel Bagentos
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James Phillips
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this 15 day of September, 2000.



Timothy J. Mangan
Senior Litigation Attorney



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FAX TRANSMITTAL SHEET

		Date: <u>9/18/00</u>
To:	Name:	<u>PROF MARGO SCHLUNGER</u>
	FAX No:	<u>HLS 253 295 6089</u>
From:	Name:	<u>MASLINT</u>
	Organization:	<u>U.S. Department of Justice Civil Rights Division Special Litigation Section</u>
	FAX No:	<u>(202) 514-0212</u>
	Off. Phone:	<u>202 514 6252</u>
Subject:	<u>FYI</u>	
Number of pages transmitted (including this sheet): (30 Pages maximum)		<u>8</u>
