IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

LEAGUE OF WOMEN VOTERS OF NEW HAMPSHIRE, *et al.*, Plaintiffs, **STEVE KRAMER, *et al.*,** Defendants.	Civil Action No. 1:24-cv-73-SM-TSM

PLAINTIFFS' OPPOSITION TO COOLIDGE-REAGAN FOUNDATION'S MOTION TO FILE MEMORANDUM AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

This Court should exercise its discretion to deny the Coolidge-Reagan Foundation's ("Coolidge") eleventh-hour request to appear as amicus curiae in this matter. Over two months after Defendants filed their Motions to Dismiss, Coolidge seeks to submit what effectively amounts to 25 additional pages of briefing in support of Defendants' motions.

There is no excuse for Coolidge's delay. Coolidge's brief largely duplicates arguments already raised by the Defendants, and to the extent Coolidge raises new arguments, they are predicated on facts that were public knowledge when Defendants filed their motions. Furthermore, Coolidge has no special interest in inserting itself into this matter at this late stage, nor have Defendants' counsel or this Court suggested that Defendants require supplemental legal assistance. Admitting Coolidge as an amicus curiae only prejudices Plaintiffs by delaying the progress of this case and the relief Plaintiffs urgently need given the rapidly approaching November 2024 General Election.[1]

LEGAL STANDARD

[1] Plaintiffs intend to file objections to Magistrate Judge Saint-Marc's September 19 Report and Recommendation recommending denial of their Motion for Preliminary Injunction.

"[T]he acceptance of amicus briefs is within the sound discretion of the court[.]" *See Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970). Federal district courts have consistently opined that a motion for leave to file an amicus brief should be denied unless the information proffered is both "timely" and "useful." *See, e.g., Am. Humanist Ass'n, et al. v. Maryland-Nat'l Cap. Park & Plan. Comm'n*, 303 F.R.D. 266, 269 (D. Md. 2014); *Yip v. Pagano*, 606 F. Supp. 1566, 1568 (D.N.J. 1985); *Leigh v. Engle*, 535 F. Supp. 418, 420 (N.D. Ill. 1982). The First Circuit has cautioned that "a district court lacking joint consent of the parties should go slow in accepting . . . an amicus brief" absent the amicus having a "special interest that justifies his having a say, or unless the court feels that existing counsel may need supplementing assistance." *Strasser*, 432 F.2d at 569. A district court may also consider whether the amicus curiae would "prejudice Plaintiffs or delay the proceedings" when weighing a motion for leave to file an amicus brief. *See Am. Humanist Ass'n*, 303 F.R.D. at 269.

ARGUMENT

This Court should exercise its discretion to reject Coolidge's belated effort to appear in this matter. As argued further herein, (1) Coolidge's motion is untimely; (2) its arguments are duplicative of those raised in Defendants' respective motions to dismiss; (3) no special circumstance warrants permitting the proposed amicus brief over Plaintiffs' objection; (4) Defendants do not need supplemental legal assistance; and (5) permitting the amicus brief at this late stage would prejudice Plaintiffs.

First, Coolidge's motion is untimely. Although there is no Federal Rule of Civil Procedure applicable to the timing of motions for leave to file an amicus brief, "district courts have discretion to permit amicus briefs and often look for guidance to Rule 29 of the Federal Rules of Appellate Procedure, which applies amicus briefs at the federal appeals level." *See Gov't Emps. Health Ass'n*

v. Actelion Pharms. Ltd., Civil Action No. GLR-18-3560, 2024 WL 4123511, at *1 n.1 (D. Md. Sept. 6, 2024). Per those rules, "[a]n amicus curiae must file its brief . . . no later than 7 days after the principal brief of the party being supported is filed." *See* Fed. R. App. P. 29(6); *see also Denmark v. Liberty Life Assur. Co. of Bos.*, 530 F.3d 1020, 1020 (1st Cir. 2008) (explaining court would only entertain motions for leave to file amicus briefs that "comply with the timetable and procedural requirements of Fed. R. App. P. 29").

Defendants filed their Motions to Dismiss on June 25, 2024, *see* ECF Nos. 76, 79, more than two months before Coolidge's motion, *see* ECF No. 97. Coolidge has no good reason for seeking to file an amicus brief so far outside the timetable afforded amicus petitioners in the appellate context, and after Plaintiffs filed their opposition, *see* ECF No. 85 (July 23, 2024). For this reason alone, Coolidge's motion should be denied.

Second, Coolidge's motion is duplicative and therefore not "useful." *See, e.g., Int'l Union of Operating Eng'rs Loc. 139 v. Schimel*, 210 F. Supp. 3d 1088, 1101 (E.D. Wis. 2016); *see also United Stationers, Inc. v. United States*, 982 F. Supp. 1279, 1288 n7 (N.D. Ill. 1997) (rejecting amicus briefs because they "would not provide further enlightenment"). In *Schimel*, the court denied a request to appear as an amicus brief where the proposed brief "add[ed] no materially significant argument that was not or could not have been raised by the [Defendant]." *Schimel*, 210 F. Supp. 3d at 1101. The *Schimel* court further opined that the proposed amicus brief "in effect merely extend[s] the length of the [Defendant's] brief." *Id.* (citing *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997)). Indeed, at least one federal appellate court has observed that amicus briefs that "duplicate the arguments made in litigants' briefs" are an "abuse" and "should not be allowed." *See Ryan*, 125 F.3d at 1063.

Similarly here, Coolidge's amicus brief duplicates many of the arguments raised by the Defendants in their respective Motions to Dismiss. For example, Coolidge contends that Section 11(b) of the Voting Rights Act ("VRA") does not create an implied right of action. *See* ECF No. 97-1, at 3-12. Defendant Lingo addresses this very argument in its Motion to Dismiss. *See* ECF No. 79-1, at 14-16. Similarly, Coolidge contends that Plaintiffs lack standing to bring their claims under the VRA. *See* ECF No. 97-1, at 12-16. Defendants Life and Voice make comparable arguments that Plaintiffs lack standing in their Motion to Dismiss. *See* ECF No. 76-1, at 4-6. And finally, Coolidge contends that Plaintiffs have not plausibly alleged a Section 11(b) violation. *See* ECF No. 97-1, at 16-21. Life and Voice asserted this same argument in their Motion to Dismiss, *see* ECF No. 76-1, at 3, as did Lingo, *see* ECF No. 79-1, at 10-11.

Critically, the lone "new" argument that Coolidge raises could have easily been argued by Defendants in their own briefs. Section IV of Coolidge's brief relies on information about the New Hampshire Presidential Primary that was in the public domain long before the Defendants filed their Motions to Dismiss. *See, e.g.*, ECF No. 97-1, at 22 n.5 (citing Politico article from January 6, 2024); ECF No. 97-1, at 23 n.6 (citing CNN Politics article from January 22, 2024); ECF No. 97-1, at 24 n.7 (citing CBS News article from January 24, 2024).

In view of the foregoing, Coolidge's amicus brief "adds no materially significant argument that was not or could not have been raised by the [Defendants]." *See Schimel*, 210 F. Supp. 3d at 1101; *see also Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761, 763 (7th Cir. 2020) ("Nobody benefits from a copycat *amicus* brief and indeed our practice is to reject them.").

Third, no special circumstances warrant overriding the Plaintiffs' objection to the filing of this untimely brief. *See Strasser*, 432 F.2d at 569; *see also News & Sun-Sentinel Co. v. Cox*, 700

F. Supp. 30, 32 (S.D. Fla. 1988) ("[A]cceptance of an *amicus curiae* should be allowed only sparingly, unless the *amicus* has a special interest[.]") (additional quotations omitted). Following *Strasser*'s guidance, at least one district court has opined that the fact that advocacy organizations would "gain from an opportunity to voice their view of the law . . . is not among the interests upon which *amicus* participation may be based." *United States v. Keleher*, 475 F. Supp. 3d 80, 85 (D.P.R. 2020). Here, Coolidge has no special interest in this case. It suggests in cursory fashion that its interest arises from its dedication to "protecting freedom of speech under the First Amendment and the integrity of the electoral process." *See* ECF No. 97, at 1. Conspicuously, however, Coolidge makes no effort to explain how its amicus brief—which argues in favor of stripping voters of their ability to seek legal protection from threatening, intimidating, and coercive conduct under the VRA—furthers its purported interest in protecting the integrity of the electoral process. Coolidge's actual interest in this matter appears limited to having an opportunity to voice its own incorrect views of the VRA—which is not a special interest and certainly not a sufficient basis to allow Coolidge's tardy brief over Plaintiffs' objection.

Fourth, there is no indication that Defendants Lingo, Life, or Voice lack adequate representation. Federal district courts have rejected untimely amicus briefs that are not offered to provide "supplementing assistance" to existing counsel. *See, e.g., In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 361 F. Supp. 3d 203, 216 n.10 (D.P.R. 2019) (citations omitted); *see also Keleher*, 475 F. Supp. 3d at 85 (denying motion for leave to file amicus in part where "[n]o party argues that the *amicus* participation is needed for a proper hearing and presentation of their case"). Here, Defendants Lingo, Life, and Voice are represented by experienced counsel, and Plaintiffs have accommodated a previous request from Defendant Lingo to supplement its legal team. *See* Assented to Motion for Admission of Helgi C. Walker *Pro Hac Vice*, ECF No. 75. Furthermore,

the parties have "not advised the Court that they are poorly represented." *See United States v. City of New Orleans*, Civil Action No. 12-1924, 2022 WL 4465534, at *2 (E.D. La. Sept. 26, 2022). Absent some indication that Defendants Lingo, Life, and Voice lack adequate representation, this factor strongly "weighs against" granting Coolidge's motion for leave. *Id.*

Fifth and finally, admission of Coolidge's amicus brief would prejudice Plaintiffs by delaying the proceedings and injecting arguments to which Plaintiffs have no opportunity to respond. Granting leave for Coolidge to file its proposed brief now would effectively confer 25 additional pages of briefing to Defendants that is not provided for under the Federal Rules of Civil Procedure or the Local Rules of this Court, and to which Plaintiffs cannot respond because the parties' briefing has long been completed. Coolidge's motion seeks an impermissible "end run around court-imposed limitations on the length of parties' briefs." *See Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 544 (7th Cir. 2003); *see also Ryan*, 125 F.3d at 1063 (explaining "'*amicus curiae*' means friend of the court, not friend of a party" in denying the motion for leave to file amicus brief). Even if Plaintiffs were provided an opportunity to respond, it would come at the expense of expeditious resolution of this matter. As Plaintiffs have repeatedly emphasized, they have a keen interest in securing prompt relief.

CONCLUSION

For the foregoing reasons, Plaintiffs oppose Coolidge's untimely, duplicative, and prejudicial effort to appear as amicus curiae in this matter and urge this Court to deny its motion.

Dated: September 20, 2024

Respectfully submitted,

/s/ Mark R. Herring

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of September, 2024, a true and correct copy of the above was electronically filed with the Court and served upon the following:

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A true and correct copy was also transmitted via electronic mail to Steve Kramer at gotvcalls@gmail.com.

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