

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15-2088 (CRC)
)	
U.S. DEPARTMENT OF)	
COMMERCE,)	
)	
Defendant.)	
_____)	

**PLAINTIFF’S RESPONSE TO MOTION OF CLIMATE SCIENCE LEGAL DEFENSE
FUND, AMERICAN METEOROLOGICAL SOCIETY, AND
UNION OF CONCERNED SCIENTISTS FOR
LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT**

Plaintiff Judicial Watch, Inc. (“Plaintiff” or “Judicial Watch”) hereby responds to the Motion of Climate Science Legal Defense Fund, American Meteorological Society, and Union of Concerned Scientists (collectively “*Amici*”) for Leave to File Brief as *Amici Curiae* in Support of Defendant U.S. Department of Commerce (“Defendant” or “Commerce”) (“*Amici* Motion”). ECF Doc. No. 18.

MEMORANDUM OF LAW

Amici’s proposed brief improperly attacks Plaintiff’s motives for requesting records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and merely restates legal arguments already asserted in Defendant’s summary judgment motion brief (“Defendant’s Motion”). *Amici*’s proposed brief offers no unique information or perspective that has not, or could not have been, raised by Defendant. *See* Brief of Climate Science Legal Defense Fund, American Meteorological Society, and Union of Concerned Scientists as *Amici Curiae* in Support of Defendant, ECF Doc. No. 18-1 (“*Amici* Brief”); Defendant’s Motion, ECF Doc. No. 16.

“An *amicus curiae*, defined as 'friend of the court,' . . . does not represent the parties but participates only for the benefit of the Court.” *United States v. Microsoft Corp.*, 2002 U.S. Dist. LEXIS 26549, 2002 WL 319366, at *2 (D.D.C. 2002). While no rule requires that an *amicus* be impartial, the court does consider the presence of partiality with regard to an *amici*'s admittance. *Youming Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136-38 (D.D.C. 2008).

Amici asserts that it can “assist the Court in resolving this case by sharing their relevant expertise about the scientific endeavor, first-hand knowledge of how scientists approach their work, and familiarity with how other courts have recently handled similar issues regarding public records requests involving scientific research.” *See Amici* Motion at 1-2. However, *Amici* serve as no “friends of the court”. Rather, the majority of *Amici*'s brief talks about “groups across the political spectrum” using FOIA as a tactic to undermine scientific studies. *Amici* Brief at 2. The bulk of “ideas, arguments, and facts” provided by *Amici* are merely recitations of and speculation about why requests for scientific records from federal and state agencies and academic institutions are made. In fact, *Amici* specifically uses Plaintiff as an example in asserting their position that records requested under FOIA are nothing more than a bullying effort to harass scientists. *Amici* Brief at 8-9. *Amici*'s opinion is very clear from the beginning – Plaintiff is allegedly using FOIA to discredit a scientific study, and Defendant should not be required to release the records it is withholding because of Plaintiff's purported motives.

In a December 28, 2015 blog posting, one of the requesting *Amici*, Climate Science Legal Defense Fund, made its opinion and feelings about Plaintiff, and similar public records requests, openly clear – they are fighting back. See <https://climatesciencedefensefund.org/2015/12/28/new-lawsuit-over-climate-scientists-emails/> (“FOIA lawsuits for scientists' private communications are an increasingly popular method by groups who seek to intimidate, harass, and try to discredit publicly-funded scientists. Lawsuits across the country are attempting to use FOIA and state law

equivalents to access troves of researchers' private correspondence. But CSLDF has been busy fighting back.")

The case before the court is a straightforward lawsuit about whether Defendant has satisfied its FOIA obligations. Defendant's motion turns on whether Defendant has properly searched for and produced all responsive, non-exempt records and the propriety of Defendant's deliberative process privilege withholdings pursuant to exemption 5 under FOIA. See 5 U.S.C. § 552. This litigation, and the motion before the court, is not the proper forum for *Amici* to "fight back" with its agenda.

Amici assert they have "familiarity with the underlying events that led to this litigation." *Amici* Motion at 5. However, the underlying event that led to this litigation is Defendant failed to satisfy its FOIA obligation. Proposed *Amici* have no unique knowledge and insight about the purely procedural issues. The "perspective" *Amici* proposes to provide is nothing more than a veiled attack on Plaintiff and its motives for requesting records from a federal agency. Such an attack is not permitted under FOIA. See *Chiquita Brands, Intl, Inc. v. U.S. Sec. & Exch. Comm'n*, 805 F.3d 289, 294 (D.C. Cir. 2015) ("Government agencies must generally release requested records without regard to the identity or motive of the requestor.")

The purpose of an *amicus* brief is to assist the court. *Amici's* brief adds nothing to the court's analysis and merely restates the same cases highlighted by Defendant or simply presents similar cases whose resulting argument is duplicative of those in Defendant's brief. As a result, *Amici's* brief is inappropriate and unnecessary in this litigation.

Dated: February 10, 2017

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Lauren M. Burke

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