IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JULIE CONTRERAS, *et al.*,	)	
Plaintiffs,	)	
	)	Case No. 21-cv-3139
v.	)	
	)	Circuit Judge Michael B. Brennan
ILLINOIS STATE BOARD OF	)	Chief District Judge Jon E. DeGuilio
ELECTIONS, *et al.*,	)	District Judge Robert M. Dow, Jr.
	)	
Defendants.	)	Three-Judge Court – 28 U.S.C. § 2284(a)

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ORDER

PER CURIAM. For the reasons stated below, the motion of Proposed *Amici* the NAACP Legal Defense and Educational Fund, Inc., Chicago Westside Branch NAACP, and NAACP Chicago Southside ("Proposed *Amici*") [142] is granted for the limited purposes identified below but cannot be considered to the extent that it raises new claims or issues beyond those identified in the existing complaints in this consolidated action.

I. Background

Proposed *Amici* have filed a motion seeking leave to file a brief as *Amici Curiae* in support of Plaintiffs in this case, which has been consolidated with two related challenges to Public Act 102-0663 ("the September Redistricting Plan"), passed by the Illinois General Assembly on August 31, 2021, and signed into law by Governor Pritzker on September 24, 2021.[1] Proposed *Amici* assert an interest in protecting the rights of Black voters under the Voting Rights Act of 1965 ("VRA") and the Reconstruction Amendments. They submit that the proposed brief will assist the Court by analyzing the impacts that the September Redistricting Plan will have on Black voters in the Chicago area, whose voices in the democratic process are at risk of being diminished if the September Redistricting Plan remains in effect. More specifically, they (a) argue that the September Redistricting Plan violates Section 2 of the Voting Rights Act by diluting the votes of Black voters for reasons similar to those asserted by the *Contreras* Plaintiffs with respect to Latino voters and (b) offer a remedial plan that proposes to cure the dilution of Black voting strength in six of the seven state house districts and two of the four state senate districts that the September Redistricting Law eliminates. See [142, 146-1.]

[1] The related cases are *McConchie v. Scholz*, No. 21-cv-3091, and *East St. Louis Branch NAACP v. Illinois State Board of Elections*, No. 21-cv-5512.

The Legislative Defendants urge the Court to deny the motion "as a last-minute attempt to inject new issues into this already-complex litigation, which is not a proper role of an *amicus*." As the Legislative Defendants note, the parties to the first two cases filed in this litigation (Case Nos. 21-cv-3091 and 21-cv-3139) have been engaged in fact and expert discovery since early September. More than a month ago, another group of Plaintiffs initiated the third lawsuit (Case No. 21-cv-5512) challenging certain district boundaries in the Metro East area. Those Plaintiffs agreed to follow the existing case schedule and their complaint was available weeks before the opening round of submissions were due to be filed. The Legislative Defendants insist that by filing after the opening round of submissions during the remedial phase and just a few days before the response to those submissions is due, Proposed *Amici*'s brief is untimely and prejudicial to Defendants, as well as beyond the scope of a proper amicus filing because it seeks to inject new claims into the case.

II. Legal Standard

Beyond the well-established principle that "[w]hether to permit a nonparty to submit a brief, as *amicus curiae*, is, with immaterial exceptions, a matter of judicial grace," *Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000), "[t]he guidance for prospective *amici* is sparing," *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761, 763 (7th Cir. 2020) (Scudder, J., in chambers), even for appellate practitioners. This phenomenon is even starker in the trial courts, where *amicus* briefs are not addressed at all in the Federal Rules of Civil Procedure or in the local rules of most districts, including this one. Interested practitioners recently have brought this omission to the attention of the Civil Rules Advisory Committee. See Advisory Committee on Civil Rules, Agenda Book, Item 21, at 340 (October 5, 2021), available at Advisory Committee on Civil Rules - October 2021 | United States Courts (uscourts.gov). But to date no such rules have even been proposed, much less published for comment or adopted. And the rarity of parties seeking *amicus* status in trial courts raises the question of whether such rules are needed or even advisable. In this vacuum, the panel looks to the Seventh Circuit's occasional pronouncements on motions for leave to file *amicus* briefs on appeal for guidance on the standards to apply when ruling on the instant motion.

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On many occasions, the Seventh Circuit has expressed skepticism about the value of the typical proposed *amicus* brief. See, *e.g.*, *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (Posner, J., in chambers) ("[I]t is very rare for an *amicus curiae* brief to do more than repeat in somewhat different language the arguments in the brief of the party whom the amicus is supporting."); *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, C.J., in chambers) ("[T]he vast majority of [*amicus curiae* briefs] have not assisted the judges"). In addition, as Judge Scudder recently wrote, "the fiction that an *amicus* acts as a neutral information broker, and not an advocate, is long gone." *Prairie Rivers Network*, 962 F.3d at 763. Nevertheless, Judge Scudder identified a list of ways in which "even a friend of the court interested in a particular outcome can contribute" to a court's understanding of the issues that it must decide:

- Offering a different analytical approach to the legal issues before the court;
- Highlighting factual, historical, or legal nuance glossed over by the parties;
- Explaining the broader regulatory or commercial context in which a question comes to the court;

- Providing practical perspectives on the consequences of potential outcomes;
- Relaying views on legal questions by employing the tools of social science;
- Supplying empirical data informing one or another question implicated by an appeal;
- Conveying instruction on highly technical, scientific, or specialized subjects beyond the ken of most generalist federal judges;
- Identifying how other jurisdictions—cities, states, or even foreign countries—have approached one or another aspect of a legal question or regulatory challenge

Id. While a good *amicus* brief "should be additive," it still must focus on the "legal issues before the court," *Prairie Rivers Network*, 962 F.3d at 763, and thus may not add new ones. *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991) (*Amici* have "never been recognized, elevated to, or accorded the full litigating status of a named party or a real party in interest" and thus may not "join issues not joined by the parties in interest[.]").

III. Discussion

Applying these principles, we will accept the proposed *amicus* brief, but only for limited purposes. While the brief advances similar general legal arguments to those already articulated by the *Contreras* Plaintiffs in their recently-filed submission [139], it provides additional insights into the history of racially polarized voting in Illinois that bear on some of the *Gingles* factors. In these respects, the brief qualifies as "additive" and potentially helpful to the panel. However, the panel cannot consider any arguments in the brief that assert new claims or challenge additional districts beyond those identified in the existing complaints. Any such arguments go beyond the proper role of an *amicus* and are untimely in the context of this expedited case. The September Redistricting Plan has been public since August 31; the last-filed of the existing complaints was docketed October 15; and the remedial phase commenced days later, as of October 19. The parties have been proceeding at a greatly accelerated pace through fact and expert discovery to meet the necessarily compressed – and largely agreed – deadlines imposed to allow for adversary presentation of the issues, a reasoned decision by the panel, and the opportunity for appellate review prior to the start of the primary election campaign early next year. That process was fast approaching its conclusion by the time the instant motion was filed, and there is no time for a do-over.

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