

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)**

**WHEELABRATOR BALTIMORE,  
L.P., ET AL.**

**Plaintiffs,**

**V.**

**MAYOR AND CITY COUNCIL  
OF BALTIMORE,**

**Defendant.**

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**CIVIL NO. 1:19-cv-01264-GLR**

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**DEFENDANT MAYOR AND CITY COUNCIL OF BALTIMORE’S OPPOSITION TO  
LOCAL GOVERNMENT COALITION FOR RENEWABLE ENERGY’S MOTION FOR  
LEAVE TO FILE AMICUS CURIAE BRIEF**

Defendant, the Mayor and City Council of Baltimore (the “City”), by its undersigned counsel and pursuant to United States District Court for the District of Maryland Local Rule 105(2)(a), respectfully submits this Opposition to Local Government Coalition for Renewable Energy’s (the “Coalition”) Motion for Leave to File Amicus Curiae Brief.

**INTRODUCTION**

The rules of this Court do not expressly permit the filing of an amicus brief, and district courts in general are advised to exert caution in accepting amicus briefs. *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970). This is particularly true when those briefs are explicitly partisan, intensely fact based, and the existing parties to the action are adequately represented by counsel. Here, the Coalition submits a fact-based endorsement of waste-to-energy technology, which plainly and explicitly seeks to lobby this Court to rule in favor of Plaintiffs. This is particularly troubling because the parties’ have bypassed discovery and agreed to an early

briefing schedule on the preemption issue raised in summary judgment. Granting the Coalition's Motion would allow an amicus to intrude on this action with an array of facts that have not been produced in discovery and which the City has had no opportunity to previously review, interrogate, or rebut. This would be improper and grossly prejudicial to the City. The City therefore respectfully requests that the Coalition's Motion be denied.

**1. The City opposes the filing of an amicus brief by a Coalition that has no legally cognizable interest in this action.**

The City opposes the Coalition's request to intervene, and its opposition must weigh heavily in this Court's decision as to whether to allow the Coalition to file an amicus brief. The First Circuit has cautioned district courts against freely granting leave for amicus briefs as follows:

[A] district court lacking joint consent of the parties should go slow in accepting, and even slower in inviting, an amicus brief unless, as a party, although short of a right to intervene, the amicus has 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.

The Coalition identifies itself as an unincorporated coalition comprised of entities such as the Solid Waste Authority of Palm Beach County in Florida, the City and County of Honolulu in Hawaii, and the Spokane Regional Solid Waste Authority in Washington State, among other entities located in other states. *See* Dckt. No. 36-1, pg. 1, fn. 1. None of these entities are located in Baltimore City or the State of Maryland, and they therefore are not governed by the Baltimore Clean Air Act and will not be bound by this Court's decision. The Coalition has failed to submit a corporate disclosure statement as required by Local Rule 103(3), so it is impossible to know whether any members of the Coalition have a financial stake in the outcome of this case. Rather

than identify some potential interest in this litigation or expressly pinpoint an area in which the Coalition could provide unique aid to the Court and/or the parties in clarifying pertinent issues, the Coalition's proposed memorandum simply touts the benefits of waste-to-energy trash disposal. The amicus here seem to have no interest in this case other than advancing Plaintiffs' cause.

**2. The proposed amicus memorandum is partisan in favor of the Plaintiffs.**

It is well established that "when the party seeking to appear as amicus curiae is perceived to be an interested party or to be an advocate of one of the parties to the litigation, leave to appear amicus curiae should be denied." *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 82 (D.N.J. 1993) (denying motion for leave to file amicus brief in support of class certification because the arguments presented by the amicus were either repetitious of the moving party or irrelevant to the issue of class certification). The Coalition has expressly advocated for the Plaintiffs' position, without even making an attempt to appear neutral. The intent of an amicus brief should be to assist **the Court** in its decision, not to exclusively advance the cause of one the parties. The coalition's Motion therefore constitutes an improper partisan endeavor and must be denied.

**3. The proposed memorandum is filled with intensely factual information rather than legal argument, and will interfere with and delay the parties' negotiated briefing schedule.**

The purpose of an amicus brief is for an amicus to shed additional light on the purely legal issues facing the court. Facts are not properly within the realm of an amicus brief, and "an amicus who argues facts should rarely be welcomed." *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970) (also noting that errors of fact presented by an amicus cannot be corrected on appeal). The

Coalition doesn't simply argue facts: the entire purpose of the brief is to place an array of facts not produced during discovery before the Court. The parties to this case settled upon an early briefing schedule to avoid discovery and bring about the swiftest conclusion possible. Requiring the City to respond to a memorandum in support of summary judgment based heavily on the facts would necessitate extensive discovery and derail the parties' thoughtfully negotiated schedule.

**4. The interests of the Coalition are adequately represented in this case.**

Should this Court be persuaded that a memorandum extolling the virtues of waste-to-energy technology would be appropriately considered in this action, it need look no further than the Plaintiffs' 59-page complaint and various memoranda. Between Wheelabrator and Curtis Bay, a total of eight highly-skilled attorneys from three separate prestigious law firms are counsel of record. The interests of Wheelabrator are properly represented in this action, making any duplication by the Coalition unnecessary.

**CONCLUSION**

For all the foregoing reasons, this Court should deny the Local Government Coalition for Renewable Energy's Motion for Leave to File Amicus Curiae Brief in Support of Plaintiffs' Motion for Partial Summary Judgment.

Dated: September 13, 2019

Respectfully Submitted,

ANDRE M. DAVIS  
City Solicitor

Respectfully submitted:

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of September, 2019, the foregoing Opposition to Local Government Coalition for Renewable Energy's Motion for Leave to File Amicus Curiae Brief in Support of Plaintiffs' Motion for Partial Summary Judgment was filed in accordance with the Electronic Filing Requirements and Procedures, as established by the United States District Court for the District of Maryland.

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Doris N. Weil, Asst. Solicitor