

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CR-20 (RTR)

GEORGIA THOMPSON,

Defendant.

**DEFENDANT'S RESPONSE TO GOVERNMENT'S
OBJECTION TO PROPOSED *AMICUS CURIAE* AMERICAN FEDERATION
OF TEACHERS-WISCONSIN AND AFFILIATED BARGAINING UNITS**

Leave ought be granted to proposed *amicus curiae* to file a brief supporting the Defendant's motion to dismiss.

The government's objection should be overruled for two reasons. First, the proposed *amicus curiae* present a unique perspective regarding the application of the statute to the exercise of a civil service employee's discretionary acts. See MOTION OF PROPOSED AMICUS CURIAE at ¶ 12. Proposed *amicus curiae* represent a large group of state employees who, like the accused, regularly "exercise independent judgment and discretion in their employment which have substantial economic impact on the citizens and entities involved in various activities within the State of Wisconsin." *Id.* The unique perspective which amici

brings to the Court's analysis of the issues raised satisfies the disjunctive test set forth Judge Posner in *Ryan v. Commodity Futures Exchange*, 125 F.3d 1062 (7th Cir. 1997) ("An amicus brief should normally be allowed when . . . the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." (internal citations omitted)). The perspective of this large number of government employees is wholly ignored by the government's objection.

Second, if the government's argument, that *amicus curiae* merely restates the argument of defense counsel (see GOVERNMENT'S RESPONSE TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF at 6-8), is taken at face value – and we do not agree that it is, because of the unique perspective which they bring to this case – then no additional time would be necessary for the government to respond; the previously established briefing schedule would not be impacted. The government's consolidated response brief addresses many of those arguments. And with respect to this point, while the government accuses *amicus curiae* of repeating arguments made by defense counsel, the government itself uses every opportunity to restate its own argument; it seems that truly no additional argument need be submitted by the government.

For these reasons, the proposed *amicus curiae*'s motion for leave to submit a

brief in support of the defendant's motion to dismiss ought be granted.

Dated this 29th day of March, 2006.

Respectfully submitted,

HURLEY, BURISH & STANTON, S.C.

By: /s/ Stephen P. Hurley

Stephen P. Hurley

State Bar No. 1015654

Attorneys for Georgia Thompson

P.O. Box 1528

Madison, WI 53701-1528

Telephone: (608) 257-0945

Fax: (608) 257-5764

e-mail: shurley@hbslawfirm.com

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