

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION**

NORCAL TEA PARTY PATRIOTS, *et al.*)
ON BEHALF OF THEMSELVES,)
THEIR MEMBERS, and THE CLASS)
THEY REPRESENT)

Plaintiffs,)

v.)

The Internal Revenue Service, *et al.*)

Defendants.)
_____)

Case No. 1:13-cv-00341

Judge Michael R. Barrett

**JUDICIAL WATCH, INC.’S REPLY IN SUPPORT OF
ITS MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE*
BRIEF SUPPORTING PLAINTIFFS’ REQUEST TO UNSEAL
THE DEPOSITIONS OF LOIS LERNER AND HOLLY PAZ**

Judicial Watch, Inc. (“Judicial Watch”), through undersigned counsel, respectfully submits this reply in support of its motion for leave to file an *amicus curiae* brief supporting Plaintiffs’ request to unseal the depositions of Lois Lerner and Holly Paz. (ECF No. 407). In its opening brief, Judicial Watch established, among other things, (1) that it has a strong interest in this case because the Court’s ruling may directly impact the release of 515 relevant documents Judicial Watch is seeking in a pending Freedom of Information Act (“FOIA”) lawsuit it has against the Internal Revenue Service (“IRS”) in the U.S. District Court for the District of Columbia and (2) that it has a unique perspective and knowledge about the ongoing investigation and public interest in the IRS targeting of conservative organizations seeking tax-exempt status. *See Judicial Watch, Inc. v. IRS*, Case No. 13-1559 (D.D.C.) (EGS) (filed Oct. 9, 2013); *See also* Judicial Watch’s Motion for Leave to File an *Amicus Curiae Brief* (ECF No. 407) at p. 2, n. 1 (list of lawsuits Judicial Watch initiated against the IRS and other government agencies as part of

its investigation into the IRS targeting of conservative organizations seeking not-for-profit status). Unable to meaningfully dispute these core contentions, Ms. Lerner and Ms. Paz unpersuasively oppose Judicial Watch's motion.

First, Ms. Paz and Ms. Lerner argue that Judicial Watch's proposed *amicus curiae* brief should not be accepted by the Court because Judicial Watch relies on legal opinions already cited by Plaintiffs in their opening briefs. *See* Opposition to Judicial Watch Inc.'s Motion for Leave to File an *Amicus Curiae* Brief (ECF NO. 411) ("Lerner and Paz Opp."), p. 3. This assertion is patently wrong. Judicial Watch specifically addresses the legal argument for disclosure based on the government misconduct exception under FOIA, which was not discussed by any of the Plaintiffs or non-parties.

Second, Ms. Paz and Ms. Lerner dismiss Judicial Watch's specific and unique interest in the outcome of this case on the basis that Plaintiffs have advanced the same argument that the "public has a right to know." *See* Lerner and Paz Opp. at p. 3. While Plaintiffs' and Judicial Watch's interests may be aligned along the same argument that the "public has a right to know," Judicial Watch's unique position as a not-for-profit, educational organization, who has led the charge in investigating the IRS' treatment of organizations seeking not-for-profit status based on conservative sounding names, is not denied or disputed by Ms. Lerner or Ms. Paz. *See* Judicial Watch's Mot. at pp. 2-6 (ECF No. 407); *See* Lerner and Paz Opp at p. 2. Judicial Watch has uncovered 41,100 pages of records relevant to the IRS targeting, some of which have led to the discovery of IRS collusion with the FBI about prosecution of such groups, discussions among IRS leadership about "secret research project" and the revelation that thousands of Ms. Lerner's emails were destroyed by the IRS during the pendency of Judicial Watch's lawsuit and other investigations. *See* Judicial Watch's Mot. at n. 2; *Judicial Watch, Inc. v. IRS*, Case No. 13-1559

(D.D.C.) (EGS), Nov. 17, 2017 Joint Status Report, ¶¶ 2-4. Judicial Watch’s interest in this case reaches beyond the specific interest of the injured plaintiff litigants in this class action. It seeks to uncover all relevant, not privileged, information, including the depositions of Ms. Lerner and Ms. Paz and their emails, about IRS’ targeting of conservative organizations. Judicial Watch seeks to advance government accountability, transparency and the rule of law.

The Court has wide discretion to permit Judicial Watch, Inc. (“Judicial Watch”) to participate as an *amicus curie* in this pending litigation. *U.S. v. City of Columbus*, 2000 U.S. Dist. LEXIS 23689 at *3 (S.D. Ohio Nov. 20, 2000); *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997), *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). As Ms. Lerner and Ms. Paz concede in their opposition, courts are more inclined to permit an *amicus curiae* to submit a brief when it “has a direct interest in another case that may be materially affected by a decision in this case.” *See* Lerner and Paz Opp. at p. 2, *quoting* *Voices for Choices v. Ill Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2002). As Judicial Watch has a direct interest in the outcome of this lawsuit and for all of the reasons set forth herein, and all of the reasons set forth in Judicial Watch’s opening brief, the Court should permit Judicial Watch to submit its *amicus curiae* brief.

Dated: January 17, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Mark J. Chumley
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