

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-Cr-020

GEORGIA THOMPSON,

Defendant.

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**DECISION AND ORDER**

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**NATURE OF THE CASE**

On January 24, 2006, a federal grand jury sitting in this district returned a two-count indictment against defendant Georgia Thompson. The defendant is charged in Count One with knowingly and intentionally causing the misapplication of funds under the care, custody and control of the State of Wisconsin in violation of 18 U.S.C. §§ 2 and 666(a)(1)(A). Count Two charges the defendant with knowingly devising and participating in a scheme to defraud the State of Wisconsin of the right of honest services as outlined in the indictment in violation of 18 U.S.C. §§ 2, 1341 and 1346.

On February 3, 2006, the defendant appeared before United States Magistrate Judge William E. Callahan for arraignment, entering a plea of not guilty. Pursuant to the pretrial scheduling order issued at that time, the defendant has filed the following motions: 1) motion to dismiss the indictment (Docket #7), 2) motion for a bill of particulars (Docket #15) and 3) motion to dismiss Count Two (Docket #16).

On March 14, 2006, AFT-Wisconsin, Wisconsin Professional Employees Council, AFT-Wisconsin Local 4848, AFL-CIO; Wisconsin Physician & Dentist Association, Local 4893;

Professional Employees in Research, Statistics & Analysis, Local 4999; Wisconsin Science Professionals, Local 3732 WFT, AFT, AFL-CIO; and Wisconsin State Public Defenders Association, Local 4822, filed a motion for leave to file an amicus curiae brief. The motion will be addressed herein. The defendant's motions will be addressed in a separate decision.

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF SUPPORTING  
DEFENDANT'S MOTION TO DISMISS INDICTMENT**

The Federal Rules of Criminal Procedure do not specifically authorize the filing of an amicus brief. Several district courts have determined that it is within their discretion to permit the filing of an amicus brief. See, e.g., United States v. Gotti, 755 F.Supp. 1157, 1158-59 (E.D. N.Y. 1991); United States v. El-Gabrownny, 844 F.Supp. 955, 957 (S.D. N.Y. 1994).

In deciding whether to allow the filing of an amicus brief, courts have taken into consideration Rule 29 of the Federal Rules of Appellate Procedure as persuasive authority. See, Gotti, 755 F.Supp. at 1158-59. Rule 29 provides that an amicus brief must be filed with a specific time period: "An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed." Fed. R. App. P. 29(e).

In reaffirming a denial of a motion for leave to file a brief amicus curiae in Ryan v. Commodity Futures Trading Com'n, 125 F.3d 1062, 1063 (7th Cir. 1997), Judge Posner<sup>1</sup> commented on amicus briefs stating: "The vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief. Such amicus briefs should not be allowed. They are an abuse." Judge Posner continued:

An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some

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<sup>1</sup>The motion was referred to Judge Posner as motions judge.

other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the amicus has unique information or prospective that can help the court beyond the help that the lawyers for the parties are able to provide.

Id.

The government asserts that the court should deny the motion for leave to file an amicus curiae brief because that proposed brief is unnecessary and would not be helpful to the court in deciding whether the indictment states viable criminal charges. In addition, the government asserts that the proposed amicus brief is untimely and its submission would delay resolution of the pending pretrial motions.

In this case, the defendant is represented by counsel. The defendant's counsel is an experienced criminal defense attorney who can adequately represent the defendant. The amici do not suggest otherwise. In fact, the defendant has filed three separate memoranda in support of her motions to dismiss. The first memorandum, filed in support of her motion to dismiss both Count One and Count Two of the indictment, was 15 pages long. On February 28, 2006, the deadline for filing further briefs, the defendant filed an additional memorandum in support of her motion to dismiss both counts that was 30 pages long. On that same date, the defendant also filed a third memorandum in support of her separate motion to dismiss Count Two. Thus, in total, the defendant has provided the court with more than 60 pages of briefing on its motions to dismiss.

The court has reviewed the defendant's brief and the amicus curiae brief submitted in support of the defendant's motions. The amicus brief does little more than "duplicate the arguments made in the [defendant's] briefs." Ryan, 125 F.3d at 1063. As such, it provides little assistance to the court. Moreover, the amici do not have unique information or a prospective

that can help the court. Accordingly, the motion for leave to file an amicus curiae brief will be denied.

**ORDER**

**NOW, THEREFORE, IT IS ORDERED** that AFT-Wisconsin, Wisconsin Professional Employees Council, AFT-Wisconsin Local 4848, AFL-CIO; Wisconsin Physician & Dentist Association, Local 4893; Professional Employees in Research, Statistics & Analysis, Local 4999; Wisconsin Science Professionals, Local 3732, WFT, AFT, AFL-CIO and Wisconsin State Public Defenders Association, Local 4822, AFT, AFL-CIO's motion for leave to file amicus curiae brief (Docket #20) be and hereby is **denied**.

Your attention is directed to 28 U.S.C. § 636(b)(1)(A) and General Local Rule 72.3 (E.D. Wis.), whereby written objections to any order herein or part thereof may be filed within ten days of service of this order. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Courtesy paper copies of any objections shall be sent directly to the chambers of the district judge assigned to the case. Failure to file a timely objection with the district court shall result in a waiver of your right to appeal.

Dated at Milwaukee, Wisconsin this 14th day of April, 2006.

BY THE COURT:

s/ Patricia J. Gorence  
PATRICIA J. GORENCE  
United States Magistrate Judge