

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

SUSANA CASTILLO, CLARISSA  
VASQUEZ, VERONICA BOTELLO,  
DULCE SOSTENES, DORAELIA  
NUNEZ, MANUEL NUNEZ  
MORALES, JR., TRUE BLUE BERRY  
MANAGEMENT, LLC, a Michigan  
limited liability company, SMELTZER  
ORCHARDS CO., LLC, a Michigan  
limited liability company, individually  
and on behalf of all others similarly  
situated,

Case No. 1:20-CV-751

Honorable Paul L. Maloney

Plaintiffs,

v.

GRETCHEN WHITMER, in her official  
capacity as Governor of the State of  
Michigan, and ROBERT GORDON, in his  
official capacity as the Director of the  
Michigan Department of Health and  
Human Services, and GARY  
MCDOWELL, in his official capacity as  
the Director of the Michigan Department  
of Agriculture and Rural Development,

Defendants.

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**PLAINTIFFS' RESPONSE TO MOTIONS TO FILE AMICUS BRIEFS (ECF NO. 31)**  
**AND (ECF NO. 33)**

**I. INTRODUCTION**

"The term 'amicus curiae' means friend of the court, not friend of a party." *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997). Now, certain parties supporting the State's position attempt to interject in this matter at the eleventh hour. They cannot do so. Plaintiffs deserve to have the final word on their motion. The Local Rules and this

Court's briefing schedule say so. If movants wanted to voice their opinion they had ample time to do so, after Plaintiffs filed their Emergency Motion for a Preliminary Injunction more than a week ago. Instead, they seek to file un rebutted amicus briefs the day Plaintiffs' Reply Brief was due. Their amicus briefs are untimely and add no unique information to aid this Court. Their motions should be denied.

## **II. ARGUMENT**

Courts considering whether to accept amicus curiae briefs consider if such briefing "is timely, useful, or otherwise necessary to the administration of justice." *United States v. State of Mich.*, 940 F.2d 143, 165 (6th Cir. 1991). "Otherwise, leave to file an amicus curiae brief should be denied." *Protect our Land & Rights Def. Fund v. Enbridge Energy, Ltd. P'ship*, No. 12-14161, 2012 WL 5288135, at \*1 (E.D. Mich. Oct. 25, 2012) (quoting *Ryan*, 125 F.3d at 1063).

### **A. Plaintiffs Get the Last Word in this Time-Sensitive Matter.**

As the movant, Plaintiffs are entitled to the last word on their motion. *See, e.g., Graves v. Mahoning Cty.*, No. 4:10CV2821, 2014 WL 808997, at \*2 n.11 (N.D. Ohio Feb. 28, 2014) (motion to file sur-reply is denied because "movants should be permitted the last word."). Under the Local Rules briefing for a dispositive motion concludes after the movant files a reply brief. L.R. 7.2(c). The Court's own expedited briefing schedule grants Plaintiffs the same right. (ECF No. 11). Plaintiffs, not these movants, deserve the last word on their motion.

Given the time-sensitive nature of Plaintiffs' Motion for an Emergency Preliminary Injunction, amicus briefing is inappropriate. Amicus briefing will only delay Plaintiffs' exigent motion. The State has ordered all mandatory testing to be completed by August 24, 2020. There is simply no time to incorporate these groups into this expedited briefing schedule.

Without preliminary injunctive relief, Plaintiffs, and other similarly situated Michiganders, will face irreparable harm from the Order.

Moreover, the proposed amicus briefs are untimely, as the preliminary injunction briefing schedule has concluded. *See Ysleta Del Sur Pueblo v. El Paso Cty. Water Improvement Dist. No. 1*, 222 F.3d 208, 209 (5th Cir. 2000) (denying motion for leave to file amicus where the issue has been adequately briefed and granting the motion "would result in the needless delay of this case's disposition.") The Court should deny the proposed amicus briefs.

**B. Amicus Briefing Offers No Unique Perspective.**

The movants seek to persuade the Court in favor of the State. Yet, "[t]he role of an *amicus* is generally 'to aid the Court in resolving doubtful issues of law rather than present a partisan view of the fact.'" *Dow Chem. Co.*, No. 00-CV-10331-BC, 2002 WL 33012185, at \*1 (E.D. Mich. May 24, 2002). Amicus briefs must offer a unique perspective. *Flagg v. City of Detroit*, 252 F.R.D. 346, 360 n.28 (E.D. Mich. 2008). The movants' proposed amicus briefs offer no unique perspective. The parties have already analyzed Equal Protection law and the levels of scrutiny that apply. Further, the worker advocates' (and others') claim to provide information related to farmworkers' concerns, the Order's necessity, and the impact of COVID-19 on farmworkers. None of these things are germane to the Order's constitutionality.

Instead, the "issues in this case have been fully and thoroughly developed by the parties." *Dow Chem. Co.*, No. 00-CV-10331-BC, 2002 WL 33012185, at \*1. "[T]here is no need to supplant the development of the issues already explicated by the parties to this case, and it is not desirable to add to the already voluminous record before the Court." *Id.* at \*2. These motions should be denied.

**III. CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully request that the Court deny both motions, (ECF No. 31) and (ECF No. 33), for leave to file amicus briefs.

Respectfully submitted,

VARNUM LLP

Dated: August 21, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 21, 2020, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all registered ECF participants listed for this case.

Varnum LLP  
Attorneys for Plaintiff

Dated: August 21, 2020

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