

FILED
 LORAIN COUNTY COURT OF APPEALS
 9TH APPELLATE DISTRICT
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Nos. 19CA011563 and
 20CA011632
 (Consolidated)

IN THE COURT OF APPEALS
 NINTH APPELLATE DISTRICT
 LORAIN COUNTY, OHIO



GIBSON BROS., INC., et al.,
Plaintiffs-Appellees/Cross-Appellants,

v.

OBERLIN COLLEGE, et al.,
Defendants-Appellants/Cross-Appellees.

APPEAL FROM THE COMMON PLEAS COURT
 LORAIN COUNTY, OHIO,
 CASE No. 17CV193761

**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED
 PEOPLE'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE
 AMICUS BRIEF IN SUPPORT OF OBERLIN COLLEGE, ET AL.**

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INTRODUCTION

The motion of the National Association for the Advancement of Colored People, Inc. (NAACP) to file its brief *amicus curiae* should be granted.

As the NAACP previously explained, it is the nation's largest and oldest civil rights grassroots organization with extensive experience protecting First Amendment rights and ending racial discrimination. NAACP Mot. at 2. Most relevant here, the NAACP successfully litigated *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982), defending its (and others') right to boycott certain businesses in response to racial injustice.

Plaintiffs-Appellees' arguments in opposition to the motion are misplaced. *First*, there is no requirement that the NAACP cite to any evidence at trial for the motion to be granted. The NAACP's brief provides legal and historical context about two key precedents, *NAACP v. Claiborne Hardware*, 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982) and *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), that the NAACP believes will aid the Court in its consideration of the legal issues in this case. *Second*, to the extent Plaintiffs-Appellees disagree with the NAACP's view that these precedents are relevant, that disagreement alone is not enough to deny the motion.

I. There is No Requirement for an Amicus Curiae to Cite Specific Testimony for its Motion to Be Granted.

The NAACP agrees with the Plaintiff-Appellees that accepting an amicus brief is a matter of judicial discretion. Opp. at 2. The NAACP also agrees that “the purpose of an amicus brief is to provide the court with information on some matter of law in respect to which the court is doubtful or to call attention to a legal matter which has escaped or might escape the court’s consideration. Opp. at 2-3 (citing *City of Columbus v. Tullos*, 1 Ohio App.2d 107, 108-09, 204 N.E.2d 67 (10th Dist.1964)). Contrary to the Plaintiffs-Appellee’s suggestion, nowhere does this standard require the NAACP to take issue with, or cite to, any specific facts in the record. Because the NAACP’s brief focuses the Court’s consideration of legal issues, the NAACP cited to the parties’ summary judgment pleadings and the trial court’s summary judgment order. See NAACP Brief at 13, 16, 17.

The standard that the Plaintiffs-Appellees cite does not require denying the NAACP’s motion. Indeed, each of the cases that Plaintiffs-Appellees cite in this section either allowed the amicus brief to be filed, or did not involve an amicus brief at all. See, e.g., *State v. Ioannidis*, Ohio Ct. App., No. 1-86-52, 1987 WL 13130, at *15 (June 18, 1987) (permitting amicus brief to be filed was not an abuse of discretion); *Matthews v. Ingleside Hosp., Inc.*, 21 Ohio Misc. 116, 120, 254 N.E.2d 923, 925 (C.P.1969) (motion to file amicus brief granted); *Lakewood v. State Emp. Relations Bd.*, 66 Ohio App.3d 387, 394, 584 N.E.2d 70, 74 (1990) (amicus briefs

allowed); *City of Columbus v. Tullos*, 1 Ohio App.2d 107, 108, 204 N.E.2d 67, 67 (1964) (the court rejected the argument that an attorney in the courtroom who interjected and cross-examined the defendant “acted as [an] *amicus curiae*”); *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 434 n.16, 104 S.Ct. 774, 785 n.16, 78 L.Ed.2d 574 (1984) (amicus brief allowed and examined “solely for whatever aid it provides in analyzing the legal questions before us.”); *United States v. Michigan*, 940 F.2d 143, 166-67 (6th Cir.1991) (*amicus* briefs allowed, but the *amici curiae* were not permitted to compel discovery). Plaintiffs-Appellees’ inability to cite any Ohio cases disallowing an amicus brief in a situation such as this is telling.

II. The NAACP’s Brief will Aid the Court in its Consideration of the Legal Issues in the Case.

The NAACP’s brief details the history and implications of two key legal precedents: *NAACP v. Claiborne Hardware*, 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982) and *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 68 (1964). Because the trial court determined that the statements in the students’ flyer were not protected opinion, Appendix at A-12, and determined that the Plaintiffs-Appellees were not limited-purpose public figures, Appendix at A-5, the relevance and impact of these First Amendment cases might not otherwise come to the Court’s attention. This type of legal and historical information is appropriate for an amicus brief. In addition, amicus briefs are common in cases involving

questions of public interest, such as this case. *See, e.g., Matthews*, 21 Ohio Misc. at 119 (“The need of [amicus] assistance arises more often in matters in which the public interests are involved than in ordinary litigation and in cases involving questions of public interest the leave is generally granted to appear as Amicus Curiae.” (citing 4 Am.Jur.2d, Amicus Curiae, s 1)).

To the extent the Plaintiffs-Appellees disagree with the descriptions of the facts and the legal arguments in the NAACP’s brief, that disagreement is not grounds for denying the motion. The Supreme Court of Ohio considered and rejected a similar argument only a few months ago. *See State ex rel. White v. Franklin Cty. Bd. of Elections*, 2020-Ohio-524 ¶ 20, 2020 WL 746785, at *4 (Feb. 14, 2020) (“White further argues that the amicus brief ‘raises false issues, causes confusion, and serves no purpose.’ However, she does not cite any authority for striking the brief on those grounds. And her motion includes substantive rebuttals to the points in the amicus brief that she disputes, thus diminishing any possible confusion.”).

CONCLUSION

For these reasons, the NAACP respectfully requests this Court grant the motion and permit it to file its brief and appear *amicus curiae* in support of defendant-appellants Oberlin College, et al.

Dated: July 6, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word-count provision set forth in Ninth District Local Rule 7(E)(2). This brief is printed using Times New Roman 14-point typeface using Microsoft word processing software and contains 947 words.

/s/ Ishan K. Bhabha

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief and motion was served on July 6, 2020, via email, pursuant to App.R. 13(C)(6) of the Appellate Rules of Civil Procedure, upon the following:

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