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**IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
LORAIN COUNTY, OHIO**

GIBSON BROS, INC., et al.,)	CASE NOS. 19CA011563; 20CA011632
)	(Consolidated)
Plaintiffs-Appellee/Cross-Appellants,)	
)	APPEAL FROM THE LORAIN COUNTY
v.)	COMMON PLEAS COURT, CASE NO.
)	17CV193761
OBERLIN COLLEGE, et al.,)	
)	
Defendants-Appellants/Cross-Appellees.)	

**REPLY IN SUPPORT OF MOTION OF NATIONAL COALITION AGAINST
CENSORSHIP, BRECHNER CENTER FOR FREEDOM OF INFORMATION,
DEFENDING RIGHTS & DISSENT, AND DKT LIBERTY PROJECT FOR LEAVE TO
FILE BRIEF OF *AMICI CURIAE* ON BEHALF OF OBERLIN COLLEGE, ET AL**

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Plaintiffs-Appellees Gibson Bros. Inc., et al. (the “Gibsons”), in their opposition to National Coalition Against Censorship, Brechner Center For Freedom Of Information, Defending Rights & Dissent, and DKT Liberty Project’s (the “*Putative Amici*”) motion for leave to participate as amici curiae, completely ignore the role that a “friend of the Court” must play in assisting with complex legal issues. “[A]n amicus curiae is one who gives information to the court on some matter of law in respect to which the court is doubtful, and also that the term ordinarily implies the friendly intervention of counsel to call the court’s attention to a legal matter which has escaped or might escape the court’s consideration.” *City of Columbus v. Tullos*, 1 Ohio App. 2d 107, 108–09, 204 N.E.2d 67 (Ohio Ct. App. 1964) (quoting 4 Am. Jurisprudence (2d), 109, § 1). Accordingly, the Gibsons’ main contentions—that *Putative Amici* “never cite to the actual record in this case” and “intentionally or ignorantly mis-portray this case as one about ‘student speech’”—play no role in whether the Court should grant *Putative Amici* leave to file their brief.

First, the Gibsons’ reference to citations in the record is puzzling, as the *Putative Amici* are not responsible for coordinating or submitting any form of record and largely discussed the legal issues regarding application of the First Amendment. Furthermore, they provide no legal or factual support for their bald assertion that *amici*’s motion should be disallowed because the record was “disregard[ed] and mischaracterize[d].” The Court has full access to the complete record, as submitted by the parties, and requires no supplementation from *amici*. Therefore, *Putative Amici* submit that the Gibsons’ opposition on this ground fails as a matter of law.

Second, *Putative Amici*’s brief is for the explicit purpose identified by Ohio courts—to assist with a disputed and difficult application of law. In Ohio, “the appearance of *amicus curiae* is permitted for the purpose of assisting the court on *matters of law* about which the court is

doubtful.” *City of Pepper Pike v. Hirschauer*, No. 56963, 1990 WL 6976, at *5 (Ohio Ct. App. Feb. 1, 1990) (citing *Tullos*; emphasis added). And although “*Amicus curiae* have no right to become a party to an action and may not, therefore, interject issues and claims not raised by the parties,” *id.*, Ohio’s appellate courts “would be predisposed to grant to any individual or group leave to file an amicus curiae brief, where to do so would help in refining and illuminating the issues before this Court,” *In the Matter of Horan*, No. 1053, 1980 WL 352366, at *5 (Ohio Ct. App. Mar. 6, 1980).

Here, *Putative Amici* have moved for leave to provide this Court with information regarding the First Amendment implications of the lower court’s decision. Regardless of whether the Gibsons believe that such an argument has merit, the disputed nature of the legal arguments surrounding application of Ohio defamation law and the First Amendment alone provides the basis for granting *Putative Amici*’s request. Moreover, because the Gibsons provided *substantive* arguments in response to *Putative Amici*’s motion for leave, *see* Opposition at 7-12—instead of responding to those legal arguments in their merits brief—the possibility of any confusion regarding the issues or record weighs against their challenge. *See State ex rel. White v. Franklin Cty. Bd. of Elections*, 2020-Ohio-524.

Accordingly, *Putative Amici* reaffirm their request that this Court enter an order granting National Coalition Against Censorship, Brechner Center For Freedom of Information, Defending Rights & Dissent, and DKT Liberty Project leave to file the brief of *amici curiae* that was submitted simultaneously with their motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was sent to all counsel of record via USPS, first class postage prepaid mail, this 7th day of July 2020, to the following:

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