

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHONG and MARILYN YIM, *et al.*,

Plaintiffs,

v.

THE CITY OF SEATTLE,

Defendant.

CASE NO. C18-0736-JCC

ORDER

This matter comes before the Court on the motions for leave to file *amicus curiae* briefs submitted by the National Apartment Association (“NAA”) (Dkt. No. 39), the Consumer Data Industry Association (“CDIA”) and the National Association of Professional Background Screeners (“NAPBS”) (Dkt. No. 42), and the National Consumer Reporting Association (“NCRA”) (Dkt. No. 44). Having thoroughly considered the parties’ briefing and the relevant record, the Court hereby GRANTS the motions for the reasons explained herein.

I. BACKGROUND

Plaintiffs, individual landlords and a membership association providing screening services to its landlord members, have filed suit against the City of Seattle, challenging the constitutionality of Seattle Municipal Code § 14.09 (“Seattle’s Fair Chance Housing Ordinance” or “the Ordinance”). (Dkt. No. 1-1 at 2–5.) Specifically, they allege that the ordinance, which generally precludes landlords from taking adverse action against tenants and prospective tenants

1 based on criminal history, violates landlords' free speech and substantive due process rights. (*Id.*
2 at 14–18.)

3 The parties have filed cross motions for summary judgment. (Dkt. Nos. 23, 33.) The
4 Court previously granted leave to file *amicus curiae* briefs to four organizations in support of
5 Defendant. (Dkt. Nos. 22, 37.) On November 20, 2018, the NAA sought leave to file an *amicus*
6 *curiae* brief, in support of Plaintiffs, regarding the Ordinance's impact on landlords and the
7 rental market. (Dkt. No. 39.) On November 21, 2018, CDIA and NAPBS jointly sought leave to
8 file an *amicus curiae* brief, in support of Plaintiffs, addressing (1) the critical role tenant
9 screening plays in the rental market, (2) how federal law requires screening of tenants, and (3)
10 how the Ordinance is preempted by federal law. (Dkt. No. 42.) On November 23, 2018, NCRA
11 sought leave to file an *amicus curiae* brief, also in support of Plaintiffs, addressing (1) how the
12 Ordinance fails to give proper notice, (2) how the Ordinance is unconstitutionally overbroad, and
13 (3) how the Ordinance is preempted by federal law. (Dkt. No. 44.)

14 **II. DISCUSSION**

15 District courts have “broad discretion” regarding the appointment of *amici*. *Hoptowit v.*
16 *Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), abrogated on other grounds by *Sandin v. Conner*, 515
17 U.S. 472 (1995). District courts frequently welcome *amicus* briefs from non-parties “concerning
18 legal issues that have potential ramifications beyond the parties directly involved or if the *amicus*
19 has ‘unique information or perspective that can help the court beyond the help that the lawyers
20 for the parties are able to provide.’” *Skokomish Indian Tribe v. Goldmark*, 2013 WL 5720053,
21 slip op. at 1 (W.D. Wash. 2013) (quoting *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*,
22 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)).

23 Defendant argues that the Court should not allow CDIA, NAPBS, and NCRA to file their
24 proposed briefs because the briefs “press[] claims and arguments Plaintiffs do not assert.” (Dkt.
25 No. 45.) While it is true that courts often decline to consider arguments raised only in *amici*
26 briefing, *see, e.g., United States v. Wahchumwah*, 710 F.3d 862, 868 n.2 (9th Cir. 2013), this

1 does not preclude the Court from hearing *amici*'s arguments at this stage of the litigation.
2 Instead, this is a factor properly considered when the Court addresses the merits of the pending
3 motions for summary judgment.

4 The Court finds that the proposed *amicus* briefs would be useful to it in resolving this
5 case. As the Court has previously acknowledged twice before (Dkt. Nos. 22 at 4, 37 at 2), the
6 issues in the underlying litigation could have ramifications beyond the current parties, making all
7 three proposed *amicus* briefs appropriate. Moreover, there are already four Court-approved *amici*
8 who support Defendant (Dkt. Nos. 22, 37), while Plaintiffs currently have none.

9 **III. CONCLUSION**

10 For the foregoing reasons, the motions for leave to file *amicus curiae* briefs (Dkt. Nos.
11 39, 42, 44) are GRANTED. None of these *amici* need to separately file their *amicus* briefs, as all
12 *amici* attached them as exhibits to their motions (Dkt. Nos. 39-1, 42-1, 44-1).

13 DATED this 19th day of December 2018.

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17 John C. Coughenour
18 UNITED STATES DISTRICT JUDGE
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