

FILED**Sep 26 - 2025**

John M. Domurad, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW YORK, *et al.*,

Defendants.

Case No. 1:25-cv-00744
Judge Mae Avila D’Agostino**UNOPPOSED MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE*
BRIEF BY FEDERATION FOR AMERICAN IMMIGRATION REFORM IN
SUPPORT OF PLAINTIFF AND IN OPPOSITION TO DEFENDANTS’ MOTION TO
DISMISS**

In accordance with Local Rule 7.2, movant Federation for American Immigration Reform (FAIR) respectfully seeks this Court’s leave to file the attached *amicus curiae* brief in support of Plaintiff and in Opposition to Defendants’ Motion for Summary Judgement. Counsel for *amicus* FAIR has conferred with counsel for all parties. Plaintiff has provided consent and Defendants have indicated they do not oppose, or otherwise take no position, on this Motion.

Courts have broad discretion to grant or deny parties leave to file *amicus* briefs. *Citizens Against Casino Gambling in Erie County v. Kempthorne*, 471 F.Supp.2d 295, 311 (W.D.N.Y. 2007). Where the Local Rules and Federal Rules of Civil Procedure are silent as to governing standards for *amicus* briefs, “district courts have looked to Rule 29 of the Federal Rules of Appellate Procedure for guidance.” *Kistler v. Black*, 2023 U.S. Dist. Lexis 12491, *3 (Dist. Conn. 2023). That is, the appellate rules’ criteria for granting leave to file *amicus* briefs can be looked to in support of FAIR’s motion. The Advisory Committee Note to the 1998 amendments to Rule 29 explains that “[t]he amended rule ... requires that the motion state the relevance of the

matters asserted to the disposition of the case” as “ordinarily the most compelling reason for granting leave to file.” FED. R. APP. P. 29, Advisory Committee Notes, 1998 Amendment.

An *amicus* brief “should normally be allowed... when the *amicus* has unique information or perspective that can help the court beyond what the lawyers for the parties are able to provide.” *Citizens Against Casino Gambling*, 471 F.Supp.2d at 311, *quoting*, *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063 (7th Cir. 1997). As explained below, FAIR is a nonprofit 501(c)(3) public interest law firm dedicated both to litigating immigration-related cases in the interests of United States citizens and to assisting courts in understanding federal immigration law. IRLI has, for decades, litigated or filed amicus briefs in a wide variety of immigration-related cases.

As then-Judge Samuel Alito wrote for the Third Circuit, “I think that our court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted. I believe that this is consistent with the predominant practice in the courts of appeals.” *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002) (citing Michael E. Tigar and Jane B. Tigar, *FEDERAL APPEALS—JURISDICTION AND PRACTICE* 181 (3d ed. 1999) and Robert L. Stern, *APPELLATE PRACTICE IN THE UNITED STATES* 306, 307-08 (2d ed. 1989)). Then-Judge Alito quoted the Tigar treatise favorably for the statement that “[e]ven when the other side refuses to consent to an amicus filing, most courts of appeals freely grant leave to file, provided the brief is timely and well-reasoned.” 293 F.3d at 133, *see also*, *Kistler*, 2023 U.S. Dist. LEXIS 12491, * 4 (same, *citing Neonatology Associates*).

Amicus curiae FAIR is a non-profit 501(c)(3) public interest organization dedicated to informing the public about the effects of both unlawful and lawful immigration, and to defending

in court the interests of Americans by limiting overall immigration, enhancing border security, and ending illegal immigration. In short, FAIR seeks to protect all Americans against the substantial harms caused by unlawful immigration.

FAIR has been involved in more 100 legal cases since 1980, either as a party or as *amicus curiae*, and has consistently defended American interests in court. The decision in this case will likely have an impact on the ability of the executive branch of the federal government to identify and deal efficiently, fairly, and safely with an illegal alien population estimated to exceed 18 million people in the United States. *Amicus* FAIR has direct and vital interests in defending the executive branch's ability to address the current illegal alien crisis and State and local officials' ability to cooperate with federal immigration authorities.

The accompanying *amicus* brief argues that this case should not be dismissed, because the State's sanctuary policies are conflict-obstacle preempted, the State's sanctuary policies are conflict-impossibility preempted, and the Tenth Amendment does not reserve to the State the power to enact its sanctuary policies.

On the first point, the brief argues that, by prohibiting state and local officials from sharing immigration-related information with federal officers, the State's policies stand as an obstacle to that cooperation among federal, state, and local law enforcement which it has been the purpose of Congress to facilitate. The policies also make it more difficult for the federal government to achieve another, very obvious, purpose of Congress: enforcement of the immigration laws it has passed. As obstacles to both of these congressional purposes, the policies violate the Supremacy Clause of the Constitution.

On the second point, the brief argues that the Defendants' sanctuary policies also require officials to withhold information about the location of removable aliens from federal officials, in

violation of federal anti-harboring provisions. The policies thus violate the Supremacy Clause by making it impossible for State and local officials to obey both them and federal law.

On the third point, the brief argues that the Tenth Amendment is no defense. The Constitution has delegated to the federal government the power to control the admission and expulsion of aliens, and has prohibited, through the Supremacy Clause, states from adopting measures that conflict with federal law. On both grounds, a power to enact the State's preempted immigration policies does not meet the conditions set forth in the Tenth Amendment—*viz.*, that the power not be delegated to the United States by the Constitution, nor prohibited to the states by the Constitution—for the reservation of a power to the states.

Because these issues are relevant to this Court's decision, FAIR's brief may aid the Court.

For the foregoing reasons, FAIR respectfully requests that the Court grant its Motion for Leave to file a brief as *amicus curiae*.

Dated: September 26, 2025

Respectfully submitted,

s/ Jonathon P. Hauenschild
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CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of July 2025, I electronically filed the foregoing motion—together with its accompanying *amicus* brief and proposed order—with the Clerk of the Court using the MFT system, which I understand to have caused service of the parties' counsel.

s/ Jonathon P. Hauenschild