

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**JOSEPH VAN LOON *et al.*,**

**Plaintiffs,**

**v.**

**DEPARTMENT OF TREASURY *et al.*,**

**Defendants.**

Civil Action No. 1:23-cv-00312-RP

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**DEFENDANTS' MOTION TO PRECLUDE PROPOSED AMICUS FILING AS  
UNTIMELY**

Defendants respectfully move the Court for an order precluding the untimely filing of an amicus brief by the Electronic Frontier Foundation (EFF). On Monday, April 17, 2023, undersigned counsel received a communication from EFF, who requested Defendants' position on a motion for leave to file an amicus brief in support of Plaintiffs' motion for partial summary judgment. Plaintiffs' summary judgment motion was filed on April 5, 2023, and EFF said it intended to file its proposed amicus by May 10, 2023. Shortly after receiving EFF's request, Defendants responded that they could not consent to an amicus filing that would come a full week after Defendants' dispositive motion is due on May 4, 2023. Defendants did note that they would consent to an amicus brief filed by Friday, April 21, 2023, however. EFF responded that it would not agree to file by April 21.

Although there is no Federal Rule of Civil Procedure applicable to amicus briefs filed in district court, "[d]istrict courts commonly seek guidance from Federal Rule of Appellate Procedure 29, which establishes standards for filing an amicus brief in the United States Courts of Appeals." *Club v. Fed. Emergency Mgmt. Agency*, No. CIV.A. H-07-0608, 2007 WL

3472851, at \*1 (S.D. Tex. Nov. 14, 2007). Under those rules, an amicus brief is untimely if it filed “later than 7 days after the principal brief of the party being supported is filed.” F. R. App. P. 29(a)(6).

Here, Defendants gave their consent for EFF to file its brief a full sixteen (16) days after Plaintiffs’ April 5, 2023, summary judgment motion. Defendants could not consent, however, to EFF’s proposed filing date, which would prejudice Defendants by requiring them to expend time and pages addressing new arguments in their reply brief that were not timely raised. Every other proposed amicus, four (4) in number, who are also supporting Plaintiffs’ dispositive motion, has agreed to file no later than April 21, 2023. Defendants respectfully request that the Court require EFF to file by no later than Tuesday, April 25, 2023, or be precluded from submitting an amicus brief.

Defendants sent several e-mails to EFF in an attempt to meet and confer regarding this motion, but did not receive a response.

Dated: March 20, 2023

Respectfully Submitted,

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