

No. 02-1018

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ILLINOIS ASSOCIATION OF)
MORTGAGE BROKERS, an Illinois not-for-)
profit corporation,)

Plaintiff-Appellant,)

vs.)

OFFICE OF BANKS AND REAL ESTATE,)
an Illinois state agency; and WILLIAM)
DARR, not personally but in his official)
capacity as Commissioner of the Office of)
Banks and Real Estate,)

Defendants-Appellees.)

) Appeal from the United States District
) Court for the Northern District of
) Illinois
) Case No. 01 C 5151
) The Honorable Judge Charles R.
) Norgle, Sr.

NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AND APPENDIX
OF AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES
OFFICE OF BANKS AND REAL ESTATE AND DARR

To: SEE ATTACHED SERVICE LIST.

You are hereby notified that Amicus Curiae Leadership Council et al. filed a Motion For Leave To File Brief And Appendix In Support Of Defendants-Appellees Office Of Banks And Real Estate And Darr with the Clerk of the Court of Appeals for the Seventh Circuit on June 26, 2002, a copy of which is attached hereto.

Date: June 26, 2002

Signed,



Stephen Stern

Attorney # 2727978

Leadership Council for Metropolitan
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U.S.C.A.—7th Circuit
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MOTION FOR LEAVE TO FILE BRIEF AND APPENDIX OF
AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES
OFFICE OF BANKS AND REAL ESTATE AND DARR

Amicus Curiae Leadership Council for Metropolitan Open Communities et al.

requests leave to file a Brief In Support Of Defendants-Appellees Office Of Banks And Real Estate ("OBRE") And Darr. At issue are the regulations promulgated by OBRE that govern "high cost"¹ home refinancing loans in Illinois. Plaintiff-Appellant claims that

¹ "High cost" loans are defined in terms of high interest rates or high fees or both. They may not impose prepayment penalties after 3 years, have balloon payments before 15 years, be refinanced in less than 12 months without tangible benefit to the borrower, have payments that take more than 50% of the borrower's monthly income, include more than 6% in fees or any single-premium credit insurance in the "amount financed," have negative amortization, exceed the value of the property securing the loan, or provide for direct payments to home improvement contractors. The regulations also provide for mortgage counseling, regular reporting of default and foreclosure data, and third-party review. 38 Ill. Admin. Code §§ 1050.155 et seq.

"[p]ublic interest weighs in favor of [an] injunction [against these regulations] because non-federally chartered housing creditors will be able to compete and alternative mortgage products will remain available." (Brief of Plaintiff-Appellant at 25.) Plaintiff-Appellant further claims that an injunction will allow "vigorous competition among lenders" and implies that if the regulations are enjoined, the inevitable result is a benefit to the public. (Brief of Plaintiff-Appellant at 25.)

Amici's brief demonstrates, contrary to Plaintiff-Appellant's claim, that unfettered freedom in the subprime lending market has led to practices, such as fee gouging and packing, that are predatory in nature. Also, some subprime lenders use these predatory practices to the detriment of helpless consumers and to destroy home ownership and communities. Because these practices are so potentially harmful, the public interest weighs *against* an injunction of the regulations at issue, which are intended to minimize the extensive damage that subprime lenders have caused.

I. *Amici's Motion For Leave To File Brief Should Be Granted Because Amici Can Demonstrate Its Interest In The Case, Its Reasons For The Brief, And Why The Brief Is Relevant To The Disposition Of The Case.*

In this motion, pursuant to Federal Rule of Appellate Practice 29(b), amici state three elements: 1) the amici's interest in the case, 2) the reasons for the amicus brief, and 3) why the matters asserted are relevant to the disposition of the case at issue. This Court has stated that it will grant leave to file an amicus brief if "the amicus has a unique perspective, or information, that can assist the court of appeals beyond what the parties are able to do." *NOW v. Scheidler*, 223 F.3d 615, 617 (7th Cir., 2000). Through their collective experience as advocates for fair housing and fair lending, as consumer

groups, as local government entities, and as public interest organizations, amici establish these three elements in their brief: first, that amici are uniquely qualified to address the public interest issue that Plaintiff-Appellant raises in its brief. (Brief of Plaintiff-Appellant at 25.); second, that Plaintiff-Appellant's asserted claims are unfounded; and finally, that the public interest weighs against an injunction of the regulations. For these reasons, the Court should grant amici's Motion For Leave To File Their Brief In Support Of Defendants-Appellees.

A. Amici's Interest In The Case Uniquely Qualifies Them To Address The Public Interest Arguments Raised By Plaintiff-Appellant In Their Brief.

Amici are among the primary fair lending and housing advocacy organizations that combat the harmful and predatory practices used by some subprime lenders in Illinois. The entities listed below range from research and training organizations to elected government officials and from national associations to community groups throughout the state of Illinois. In their statements of interest, which are listed in the brief, several of the organizations state that they supported the regulations at issue and provided testimony to the legislature documenting the need for such regulations in the subprime market.

Further, the regulations are the legislature's recognition of the harmful effects of predatory lending practices and the need to prevent the harm some lenders may cause. Part of the mission of several of the amici is to research fair lending issues, to highlight and eliminate predatory lending practices, and to assist consumers with fair lending

issues. Amici's interest in this case is to provide the Court with insight gathered through its collective experience with fair lending issues.

B. Amici's Reasons For Submitting The Brief Are To Prove That Plaintiff-Appellant's Claim That Public Interest Favors An Injunction Is False.

Amici submit their brief to demonstrate that Plaintiff-Appellant's claim that the public will benefit from an injunction of the regulations is unfounded. Through their collective and extensive hands-on experience with and policy research on predatory lending, amici are in a unique position to show the Court the abuses consumers suffered before the regulations were enacted. Amici can provide a detailed explanation of what makes certain subprime loans "predatory," how the rate of predatory loans has soared in Illinois, and how devastating those predatory loans are. Further, amici can demonstrate to the Court that these predatory loans appear to target certain groups, particularly elderly and minority homeowners.

C. The Information Provided By Amici Is Relevant To The Disposition Of The Case Because Public Interest Weighs Against An Injunction.

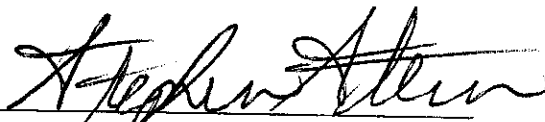
The information provided by the amici is relevant to the disposition of the case because Plaintiff-Appellant's claim that the public interest weighs in favor of striking down the regulations at issue. (Brief of Plaintiff-Appellant at 23.) Amici has compiled numerous studies and examples that demonstrate that the current lending process discriminates against minorities and harms older homeowners. Furthermore, in their brief, amici seek to share their first-hand information, research, and concerns about the nature and extent of these abuses and the devastating effect they have on individuals and communities in Illinois. This information conclusively proves that the public

interest weighs against an injunction. This information is relevant to the disposition of this case, because if the Court considers the public interest issue raised by the Plaintiff-Appellant, then the brief of the amici would provide the necessary insight and information for the Court to make an informed decision on this issue.

WHEREFORE, Amicus Curiae respectfully request that the Court grant leave for the filing of their attached Brief Of Amici Curiae In Support Of Defendants-Appellees.

Dated: June 26, 2002

Respectfully submitted,

By: 
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CERTIFICATE OF SERVICE

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I certify that I filed the required number of copies of the Motion for Leave To File Brief And Appendix Of Amicus Curiae In Support of Defendants-Appellees Office of Banks and Real Estate and Darr to the court and that I served in the above entitled suit by hand delivery on June 26, 2002, to the following parties:

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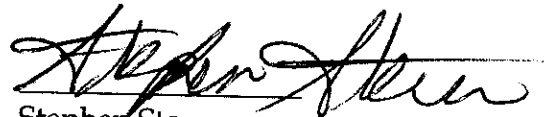
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Signed


Stephen Stern

Subscribed and sworn to before me on
June 26, 2002


Notary Public

