

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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THE UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	
	:	
- v. -	:	No. 1:17-cv-2511-RJL
	:	
AT&T INC., ET AL,	:	
	:	
Defendants.	:	
	:	
-----	X	

**MOTION FOR LEAVE BY FORMER DEPARTMENT OF JUSTICE OFFICIALS
TO FILE BRIEF AMICI CURIAE IN SUPPORT OF NEITHER PARTY**

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Of Counsel to Amici

Movants, Former Department of Justice Officials, request leave to file as amici curiae a brief in support of neither party in this matter.¹ The proposed brief is submitted with this motion. Movants inquired as to whether the parties consented to the filing of this brief. Counsel for the government indicated that as “a general matter, the Antitrust Division does not oppose amicus briefs in the district court.” Movants sought consent from counsel for defendants by an email dated March 6, 2018, and a follow-up email dated March 8, 2018. Counsel for defendants did not respond to movants’ request.

I. Identity of Amici

Amici are former Department of Justice officials:

Preet Bharara served as the United States Attorney for the Southern District of New York (2009-2017), and as an Assistant United States Attorney for the Southern District of New York (2000-2005). He is a paid Senior Legal Analyst for CNN; he files this brief not in that capacity, but in his capacity as a former United States Attorney for the Southern District of New York.

Joyce R. Branda served as Acting Assistant Attorney General of the Civil Division (September 2014-February 2015), Deputy Assistant Attorney General for the Commercial Litigation Branch of the Civil Division (2012-2017), Director of the Commercial Litigation Branch (2007-2012), Deputy Director of the Commercial Litigation Branch (1991-2007), Assistant Director of the Commercial Litigation Branch (1987-1991), as a Trial Attorney for the Commercial Litigation Branch (1982-1987), and a Trial Attorney for the Land and Natural Resources Division (1980-1982).

¹ A note on formatting: internal quotation marks and citations are omitted and capitalization is modernized and conformed to sentence structure without notice.

John W. Dean served as the Associate Deputy Attorney General (1969-1970). He also served as White House Counsel to the President of the United States (1970-1973). Mr. Dean, an independent contractor with CNN, is an on-air “contributor”; he files not in that capacity, rather in his capacity as a former Associate Deputy Attorney General and White House Counsel.

Damon P. Martinez served as the United States Attorney for the District of New Mexico (2014-2017), as an Assistant United States Attorney for the District of New Mexico (2001-2014), and as a Special Assistant United States Attorney for the District of New Mexico (2000-2001).

John McKay served as the United States Attorney for the Western District of Washington (2001-2007), and as a Special Assistant to the Director of the Federal Bureau of Investigation (1989-1990).

Molly Moran served as the Principal Deputy Associate Attorney General (2014-2016), Acting Assistant Attorney General for the Civil Rights Division (2014), and Counselor and Deputy Chief of Staff to the Attorney General (2010-2014).

Florence T. Nakakuni served as the United States Attorney for the District of Hawaii (2009-2017), as an Assistant United States Attorney for the District of Hawaii (1985-2009), and as an Attorney-Advisor in the Office of Information and Privacy Appeals (1980-1982).

Sarah R. Saldaña served as the United States Attorney for the Northern District of Texas (2011-2014), and as an Assistant United States Attorney for the Northern District of Texas (2004-2011). She also served as the Director of Immigration and Customs Enforcement in the Department of Homeland Security (2014-2017).

Jocelyn Samuels served as the Acting Assistant Attorney General for the Civil Rights Division (2013-2014), as the Principal Deputy Assistant Attorney General for the Civil Rights

Division (2011-2013), and as a Counsel to the Assistant Attorney General for the Civil Rights Division (2009-2011).

Carter M. Stewart served as the United States Attorney for the Southern District of Ohio (2009-2016), and as an Assistant United States Attorney for the Northern District of California (2003-2005).

Joyce White Vance served as the United States Attorney for the Northern District of Alabama (2009-2017), and as an Assistant United States Attorney for the Northern District of Alabama (1991-2009).

II. Movants' Interest

Amici are former Department of Justice officials who served in prior administrations. As alumni of the Department, amici understand the importance of avoiding political interference in specific-party law enforcement matters and are intimately familiar with the Department of Justice's procedures for doing so. Amici agree with Thomas Jefferson that "[t]he most sacred of the duties of government [is] to do equal and impartial justice to all its citizens." This fundamental principle of our democracy—that all people are equal under the law—is imperiled when there is White House interference, or even the appearance of such interference, with law enforcement matters involving specific parties. For decades, administrations of both parties have abided by this norm and limited White House intervention in specific-party matters. Amici worry that this norm, which is grounded in our Constitution, is weakening.

As explained herein, amici are concerned that the President and the White House may have interfered in this matter. Amici request that the Court ensure that the parties are able to examine this issue—and if necessary, the Court provide redress—so that the public retains confidence that the Department is fulfilling its mission of ensuring the fair and impartial

administration of justice for all Americans. Amici take no position on the antitrust aspects of this matter.

III. The proposed brief provides amici’s unique perspective and is relevant to the disposition of the case

This Court has “broad discretion” to permit the filing of amicus briefs. *Nat’l Ass’n of Home Builders v. U.S. Army Corps of Eng’rs*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007). “Amicus participation is normally appropriate when (a) a party is not represented competently or is not represented at all, (b) the amicus has an interest in some other case that may be affected by the decision in the present case, or (c) when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Hard Drive Prods., Inc. v. Does 1-1*, 495, 892 F. Supp. 2d 334, 337 (D.D.C. 2012); *see also Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003). “The filing of an *amicus* brief should be permitted if it will assist the judge by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties’ briefs.” *Commonwealth of the N. Mar. I. v. United States*, No. 08-1572, 2009 WL 596986, *1 (D.D.C. 2009).

Amici’s participation is justified under this standard. Amici have both “relevant expertise and a stated concern for” the issue of avoiding White House interference in specific-party matters. *District of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011). Moreover, amici bring a unique and informed perspective to this matter. Amici’s longstanding service in the Justice Department allows them to provide the court with an in-depth constitutional and equitable framework for considering whether there has been unlawful interference in this matter. Amici’s *only* interest in this matter is ensuring that the proceedings comply with the Constitution.

CONCLUSION

Amici request that the Court grant this motion, allow them to participate in this action as amici curiae, and accept for filing the attached brief.

Date: March 8, 2018

/s/ Benjamin L. Berwick

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Of Counsel to Amici

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2018, I filed this motion with the United States District Court for the District of Columbia using the CM/ECF system, which will cause it to be served on all counsel of record.

/s/ Benjamin L. Berwick