

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5177

S.D. EDMONDS,

Plaintiff/Appellant,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant/Appellee.

**UNOPPOSED MOTION OF PUBLIC CITIZEN, INC., FOR LEAVE TO
FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF APPELLANT**

Public Citizen, Inc., respectfully seeks leave to file the accompanying brief as amicus curiae in support of respondent. Counsel for both parties have stated that they do not oppose this motion. Consistent with Circuit Rule 29(b), the amicus brief is being filed within the time allowed by F.R.A.P. 29(e).

Public Citizen seeks leave to file this brief because, as stated more fully in the “Interest of Amicus Curiae” section of the accompanying brief, Public Citizen has a strong interest in issues relating to the availability of attorney fees under FOIA. Public Citizen attorneys frequently file FOIA actions both on behalf of Public Citizen itself and as counsel for other persons or organizations who have received delayed or inadequate responses to FOIA requests. The specific issue in

this case — whether a requester who wins a court order expediting the government’s response to a FOIA request and denying the government’s request for an “*Open America*” stay has “substantially prevailed” — is of particular significance to Public Citizen because of the importance to it (and to other requesters) of the substantive right under FOIA to a “prompt” response by the government to a proper request.

Public Citizen has attempted to avoid duplication of the argument of the appellant. Public Citizen’s brief brings to bear on the issue a discussion of the statutory provisions and legislative history that emphasize the importance of requesters’ entitlement under FOIA to a timely response from the government, and to expedited consideration of FOIA requests in appropriate cases. Public Citizen believes that this discussion should provide the Court with a useful supplement to the arguments contained in the appellant’s brief.

To the best of our knowledge, there are no other amici curiae, so the requirements of Circuit Rule 29(d) do not apply. In addition, the submission of this brief will not disrupt the briefing schedule, because the government’s brief is currently not due for another 37 days. As required by Circuit Rule 29(b), a Rule 26.1 disclosure motion is attached.

CONCLUSION

For the foregoing reasons, Public Citizen's motion for leave to file the accompanying brief as amicus curiae in support of the appellant should be granted.

Respectfully submitted,

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December 6, 2004

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RULE 26.1 CERTIFICATE OF AMICUS CURIAE PUBLIC CITIZEN, INC.

Pursuant to Fed. R. App. P. 26.1 and Circuit Rule 26.1, undersigned counsel certifies that Public Citizen, Inc., is a non-profit corporation engaged in advocacy efforts on a range of issues including openness in government. Public Citizen, Inc., has no corporate parents or subsidiaries, and no publicly held company has an ownership interest in it of any kind or degree.

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December 6, 2004

*Attorney for Amicus Curiae
Public Citizen, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2004, I caused copies of the foregoing Unopposed Motion of Public Citizen, Inc., for Leave to File Brief as Amicus Curiae in Support of Appellant and Rule 26.1 Certificate of Amicus Curiae Public Citizen, Inc., to be served by first-class mail, postage prepaid, and be electronic mail, on:

H. Thomas Byron
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