June 7, 2010

The Honorable Loretta A. Preska
Chief Judge, United States District Court
Southern District of New York
500 Pearl Street, Room 1320
New York, NY 10007
Via facsimile to: (212) 805-7941

Re: *United States v. International Brotherhood of Teamsters,* Civ. No. 88 Civ. 4486

Dear Judge Preska:

Both the Government and the IBT oppose TDU's submission of objections to the Court on the ground that TDU is a non-party to the Consent Decree. TDU's intent is not to assert party status, but to appear as *amicus curiae* for the purpose of seeking the Court's review and determination of the merits of the objections that it stated by letter of May 14, 2010, with *errata* submitted on May 17, 2010 and this reply. We hereby request the Court to treat and file this letter as a motion to appear as *amicus curiae* for that purpose. A motion by undersigned counsel to appear *pro hac vice* will be filed promptly.

The parties' reliance on this Court's decision of August 23, 2006, denying TDU's application for relief with respect to the supplemental rules for distribution of the recording of the 2006 candidate forum, is inapposite. In that decision, the Court held that TDU, as a non-party to the Consent Decree, had no standing to file an application on its own behalf based on its *amicus* status in a prior matter, and that an *amicus* cannot in any event raise new issues, not presented by the parties. 2006 WL 2466246, at *4 (Aug. 25, 2006). The present application of TDU to appear as *amicus* does not relate to a prior matter, but to the matter now before the Court. Nor does TDU seek to present an application to the Court on its own behalf, but instead addresses the present application by the parties to the Consent Decree, seeking the Court's approval of the proposed 2010-2011 Election Rules.[1]

It was to permit just such a submission as the instant one that this Court last approved a

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[1] The second argument raised by both the Government and the IBT, is also inapposite, as it relies on *In re Carlo Scalf*, 2005 WL 1653854 (July 14, 2005), ruling that TDU, as a nonparty to a disciplinary proceeding before the IRB, lacked standing to object to the IRB's application for enforcement.

TDU *amicus* application, on September 22, 2005, granting TDU *amicus* status for the purpose of considering TDU's comments on the candidate forum rule proposed for the 2005-2006 election. As set forth by the Association for Union Democracy in its letter to the Court of June 1, 2010, sound policy considerations support the granting of this application for *amicus* status. Indeed, it was on the basis of TDU's comments as *amicus* in connection with the parties' application for approval of the proposed 2005-2006 Election Rules that this Court approved changes to the proposed candidate forum rule.

The Government has stated on opposition to the merits of TDU's objections.

The IBT's objections are addressed below:

1. In the absence of polling of the membership by the Election Supervisor, there is no definitive evidence explaining why voting participation rates have declined so precipitously, and it is not too late for the Election Supervisor to derive some potentially important insights from such polling, should he decide to conduct it What we do know definitively is that every union member is entitled under the LMRDA to an informed vote, equal access to the voters for all candidates, and procedures that provide real protection against retaliation. TDU's proposals address these inarguable statutory rights.

2. The IBT's assertion that more DVDs were "more widely disseminated" in the 2006 election than in the 2001 is quite misleading. Presumably, the IBT refers simply to the fact that the recording of the candidate forum was made available in 2006 by online streaming video. But the viewing data reflect very few actual viewings by that distribution mode. In 2001, a significantly larger number of DVDs was printed and distributed to the candidates for further distribution to members than the total number of online viewings of the forum *plus* the total number of DVDs that were distributed to candidates in 2006. What is much more significant is that both the 2001 and 2006 numbers of DVDs distributed and viewings of the forum by streaming video were far below any arguably significant portion of the voting membership.

3. The IBT has failed to address the substantial concern raised by TDU to that aspect of the candidate forum rule that permits a stand-in for the candidate at the one forum that the rule requires: This escape clause completely frustrates the essential purpose of the rule, which is to permit voters to assess the candidates themselves, by comparing them directly to one another.

4. The IBT's response to TDU's proposed cuts to candidate spending limits directly contradicts the advice of the 2001 Election Administrator, who also recommended cutting those limits

5. The IBT has failed to address the merits of TDU's "Hatch Act" proposal.

6. TDU submits that the position of the Election Supervisor and the IBT on candidate access to email lists is legally inadequate. The LMRDA *requires* the granting of candidate

access to *all* membership lists compiled either on union time or by using union resources. The Election Supervisor should be willing to commit to adhering to the statutory standard, and we respectfully request that the Court should require that the Rules assure adherence to the statutory standard.

7. The IBT has failed to respond to the merits of TDU's objections to the slate withdrawal rule.

8. Beyond complaining that the argument is "incomprehensible," the IBT has failed to respond to the merits of TDU's objections to the absence of meaningful protection under the proposed Rules to post-election union job retaliation.

Respectfully submitted,

/s/

Barbara Harvey

cc: Brian M. Feldman, Esq.
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