



*State of New Jersey*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
PO Box 112  
TRENTON, NJ 08625-0112

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

CHRISTOPHER S. PORRINO  
*Attorney General*

MICHELLE L. MILLER  
*Acting Director*

February 21, 2017

**ELECTRONICALLY FILED**

Hon. Michael A. Shipp, U.S.D.J.  
Clarkson S. Fisher Building  
& U.S. Courthouse  
402 East State Street  
Trenton, NJ 08608

Re: Jane Doe v. Vincent T. Arrisi  
Docket No.: CIV-16-08640-MAS-DEA

Dear Judge Shipp:

We represent the Defendants in the above-referenced matter. We write in opposition to the petition by several public interest groups to file an amicus brief in opposition to Defendants' motion to dismiss. The petition should be denied because the proposed brief is untimely and not useful, and petitioners' interests are already represented competently in this case.

No rule in the District Court governs the appearance of an amicus curiae. District Courts are therefore guided by Federal Rule of Appellate Procedure 29, which governs the appearance of amici in the circuit courts. U.S. v. Alkaabi, 223 F.Supp.2d 583, 592 (D.N.J. 2002). That rule requires an amicus brief to be submitted within seven days after the brief of the party being supported is filed. Fed. R. App. Pr. 29(a)(6). The purpose of the rule is to permit an amicus time to review the brief being supported in order to avoid "repetitious argument." Fed. R. App. Pr. 29, Advisory Committee Note (e). Although District Courts have discretion to grant leave to file an amicus brief, such applications are granted when "the proffered information is timely and useful" and "the petitioner's interest is not represented competently or at all in the case." Liberty



February 21, 2017

Page 2

Res., Inc. v. Philadelphia Hous. Auth., 395 F. Supp. 2d 206, 209 (E.D. Pa. 2005). Other factors include the petitioner's "special interest" in the matter and whether the petitioner is partial to a particular outcome. Ibid.

Here, the proposed brief is neither timely nor useful. The proposed amici attempt to file their brief *before* Plaintiff has submitted her brief in opposition to the motion to dismiss. This violates Federal Rule of Appellate Procedure Rule 29, which requires a timely amicus brief to be submitted for consideration within seven days *after* the brief being supported is filed. Due to the untimely application, the parties cannot avoid potentially repetitious arguments.

Furthermore, the proposed brief addresses a claim not raised in the Plaintiff's complaint. Specifically, the proposed amici argue against the constitutionality of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq. As no constitutional challenge to the ADA is contained in the complaint, the proposed amici's argument is not useful to this motion. Further, any party challenging the constitutionality of a federal statute must serve the federal government pursuant to Federal Rule of Civil Procedure Rule 5.1, which does not appear to have occurred here.

Finally, the proposed amici's interests are already represented competently by the Plaintiff and her counsel in this matter. At the very least, it is impossible to adjudge whether such representation is competent to also represent the amici's interests prior to any brief being submitted by Plaintiff.

For these reasons, the court should deny the petition to file an amicus brief.

Respectfully submitted,

CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Francesco Ferrantelli Jr.  
Francesco Ferrantelli Jr.  
Deputy Attorney General

Cc: Paul Fitzmaurice, Esq. (electronically)