

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

DREW ADAMS, a minor, by and through
his next friend and mother, ERICA
ADAMS KASPER,

Plaintiff,

v.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,

Defendant.

Case No. 3:17-cv-00739-TJC-JBT

**REQUEST FOR JUDICIAL NOTICE AND MEMORANDUM OF LAW AS TO
FEDERAL COURT DECISIONS MAKING FACTUAL FINDINGS REGARDING
TRANSGENDER PEOPLE**

Pursuant to Federal Rule of Evidence 201, Plaintiff, Drew Adams, a minor, by and through his next friend and mother, Erica Adams Kasper (“Plaintiff”), and by and through their undersigned counsel, respectfully requests that this Court take judicial notice of federal courts made the below key factual findings in constitutional rights cases holding that discrimination based on transgender status is subject to heightened scrutiny. Specifically, Plaintiff requests that the Court take judicial notice of the federal courts making factual findings that transgender people as a class have historically been subject to discrimination; transgender people bear a defining characteristic that bears no relation to their ability to perform or contribute to society; transgender people exhibit immutable or distinguishing characteristics that define them as a

discrete group; and that transgender people constitute a discrete minority group with relatively little political power.

MEMORANDUM OF LAW

Federal Rule of Evidence 201 allows this Court to take judicial notice of adjudicative facts that cannot reasonably be disputed and are subject to ready proof. Specifically, “[t]he Court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Moreover, the Court is required to take judicial notice upon Plaintiff’s request where, as here, the Court “is supplied with the necessary information.” Fed. R. Evid. 201(c). All of these requirements are met here.

The facts proposed for judicial notice are relevant to this proceeding. Plaintiff has asserted that the School Board of St. John’s County has discriminated against him based upon his transgender status and sex which includes, but is not limited to, his gender identity. The factual findings of other courts regarding transgender people listed above are relevant to show and summarize the nature of transgender people as a class, of which Plaintiff is a member, as well as the unfortunate history discrimination, harassment, and violence they have faced because of their gender identity. Additionally, judicial determinations are uniquely qualified to provide factual support demonstrating the history of discrimination faced by individuals who are transgender. Furthermore, that the aforementioned federal courts have made such key factual findings are admissible facts and, as publicly available records, can be readily authenticated by this Court. *See* Fed. R. Evid. 902(6).

A court may take judicial notice of “the factual findings of another court as part of the public record.” *United States ex rel. New v. Rumsfeld*, 350 F. Supp. 2d 80, 89 (D.D.C. 2004). *See also United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) (“a court may take notice of another court’s order” for the “purpose of recognizing the ‘judicial act’ that the order represents or the subject matter of the litigation”). Indeed, federal courts have taken judicial notice of the history of discrimination faced by minority groups in other contexts in several jurisdictions. *See, e.g., League of United Latin American Citizens, Council No. 4434 v. Clements*, 986 F.2d 728, 778 (5th Cir. 1993) (upholding District Court’s judicial notice “of official discrimination against Hispanics and Blacks in Texas”); *Whitfield v. Democratic Party of Arkansas*, 890 F.2d 1423, 1424 (8th Cir. 1989) (noting propriety of judicial notice of Arkansas’s “official discrimination in its electoral process” and “racially discriminatory voting practices”); *Cokely v. New York Convention Center Operating Corp.*, No. 00 Civ. 4637, 2003 WL 1751738, *3 fn. 3 (S.D.N.Y. April 2, 2003) (“Judges . . . can take judicial notice of the fact that discrimination based on race, nationality and gender have been endemic in the construction industry over the past several decades”); *Smith v. Clinton*, 687 F. Supp. 1310, 1317 (E.D. Ark. 1988) (taking judicial notice of “a history of racial discrimination in the electoral process in Arkansas”).

Accordingly, pursuant to Federal Rule of Evidence 201, Plaintiff hereby requests that this Court take judicial notice of the following adjudicative facts from the cases listed below:

- 1) *Whitaker v. Kenosha Unified School District No. 1 Board of Education*, 858 F.3d 1034 (7th Cir. 2017). In *Whitaker*, the Seventh Circuit affirmed the district court’s grant of a preliminary injunction prohibiting the school district from preventing a transgender

student from using the restroom consistent with his gender identity. In making such a determination, the Seventh Circuit found that:

- a. “There is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity.” *Id.* at 1051.

2) *Evancho v. Pine-Richland School District*, 237 F. Supp. 3d 267 (W.D. Pa. 2017). In *Evancho*, the district court granted a preliminary injunction enjoining the defendant school district from enforcing a policy that would prohibit transgender students from using the bathroom consistent with their gender identity. In granting the preliminary injunction on Equal Protection grounds, the district court found:

- a. that “transgender people as a class have historically been subject to discrimination or differentiation; that they have a defining characteristic that frequently bears no relation to an ability to perform or contribute to society; that as a class they exhibit immutable or distinguishing characteristics that define them as a discrete group; and that as a class, they are a minority with relatively little political power,” *id.* at 288;
- b. “that, as a class of people, transgender individuals make up a small (according to all parties, less than 1%) proportion of the American population,” *id.*; and
- c. that “as to transgender individuals as a class, that characteristic bears no relationship to their ability to contribute to our society,” *id.*

3) *Board of Education of the Highland Local School District v. U.S. Department of Education*, 208 F. Supp. 3d 850 (S.D. Ohio 2016). In *Highland*, the district court granted a preliminary injunction against the school district prohibiting them from

discriminating against the intervenor third-party plaintiff on the basis of her transgender status and ordering the school district to permit her to use the girls' restroom. In so doing, the district court found:

- a. that "there is not much doubt that transgender people have historically been subject to discrimination including in education, employment, housing, and access to healthcare," *id.* at 874;
 - b. that "there is obviously no relationship between transgender status and the ability to contribute to society," *id.*;
 - c. that "transgender people have immutable and distinguishing characteristics that define them as a discrete group, or as the Second Circuit put it in *Windsor*, 'the characteristic of the class calls down discrimination when it is manifest,' 699 F.3d at 183," *id.* (cleaned up);
 - d. that "as a tiny minority of the population, whose members are stigmatized for their gender non-conformity in a variety of settings, transgender people are a politically powerless minority group," *id.*; and
 - e. that "[t]he efforts of states to pass legislation requiring individuals to use sex-segregated bathrooms that correspond with their birth sex are but one example of the relative political powerlessness of this group," *id.*
- 4) *Adkins v. City of N.Y.*, 143 F. Supp. 134 (S.D.N.Y. 2015). In *Adkins*, the district court denied the defendant's motion to dismiss, ruling that the plaintiff, a transgender woman, had sufficiently alleged a pattern of misconduct to plead a § 1983 against the defendant for equal protection violations. In so doing, the district court found:

- a. that “transgender people have suffered a history of persecution and discrimination” and that “this history of persecution and discrimination is not yet history,” *id.* at 139;
- b. that “transgender status bears no relation to ability to contribute to society,” *id.*;
- c. that “transgender status is a sufficiently discernible characteristic to define a discrete minority class,” *id.*; and
- d. that “transgender people are a politically powerless minority,” *id.* at 140.

5) *Doe I v. Trump*, No. CV 17-1597, --- F. Supp. 3d ---, 2017 WL 4873042 (D.D.C. Oct. 30, 2017). In *Doe I*, the district court issued a preliminary injunction prohibiting the enforcement of a ban on open service and accession by transgender individuals in the United States armed services. In so doing, the district court found:

- a. that “transgender individuals have immutable and distinguishing characteristics that make them a discernable class,” *id.* at *27;
- b. that “[a]s a class, transgender individuals have suffered, and continue to suffer, severe persecution and discrimination,” *id.*;
- c. that “[d]espite this discrimination, the Court is aware of no argument or evidence suggesting that being transgender in any way limits one’s ability to contribute to society,” *id.*; and
- d. that “transgender people as a group represent a very small subset of society lacking the sort of political power other groups might harness to protect themselves from discrimination,” *id.*

6) *Stone v. Trump*, No. CV MJG-17-2459, --- F. Supp. 3d ---, 2017 WL 5589122, at *15 (D. Md. Nov. 21, 2017). In *Stone*, a second district court issued a preliminary injunction prohibiting the enforcement of a ban on open service and accession by transgender individuals in the United States armed services. In so doing, the district court found that:

- a. “transgender individuals appear to satisfy the criteria of at least a quasi-suspect classification.” *Id.* at *15.

CONCLUSION

WHEREFORE, based on the foregoing, Plaintiff respectfully requests that this Court take judicial notice of the above adjudicative facts pursuant to Federal Rule of Evidence 201(b), as they are not subject to reasonable dispute.

CERTIFICATE OF CONFERENCE PURSUANT TO LOCAL RULE 3.01(g)

Pursuant to 3.01(g) of the Local Rules of the Middle District of Florida, the undersigned certifies that he has conferred with the attorneys representing Defendant regarding the relief requested in the motion. The parties were unable to reach a resolution and Defendant’s counsel does not consent to the relief requested.

Dated this 29th of November, 2017

Respectfully submitted,

/s/ Omar Gonzalez-Pagan

Omar Gonzalez-Pagan
(admitted pro hac vice)
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York 10005-3919
Telephone: 212-809-8585

Kirsten Doolittle, Trial Counsel
Florida Bar No. 942391
THE LAW OFFICE OF KIRSTEN DOOLITTLE, P.A.
The Elks Building
207 North Laura Street, Ste. 240
Jacksonville, FL 32202
Telephone: 904-551-7775

Facsimile: 212-809-0055
ogonzalez-pagan@lambdalegal.org

Tara L. Borelli (*admitted pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
730 Peachtree Street NE, Suite 640
Atlanta, GA 30308-1210
Telephone: 404-897-1880
Facsimile: 404-897-1884
tborelli@lambdalegal.org

Paul D. Castillo (*admitted pro hac vice*)
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
3500 Oak Lawn Avenue, Suite 500
Dallas, Texas 75219
Telephone: 214-219-8585
Facsimile: 214-219-4455
pcastillo@lambdalegal.org

Natalie Nardecchia
(*admitted pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
4221 Wilshire Boulevard, Suite 280
Los Angeles, CA 90010-3512
Tel. 213-382-7600 | Fax: 213-351-6050
nnardecchia@lambdalegal.org

Facsimile: 904-513-9254
kd@kdlawoffice.com

Jennifer Altman
Florida Bar No: 881384
Markenzy Lapointe
Florida Bar No: 172601
Shani Rivaux
Florida Bar No: 42095
Aryeh Kaplan
Florida Bar No: 60558
PILLSBURY WINTHROP SHAW PITTMAN, LLP
600 Brickell Avenue Suite 3100
Miami, FL 33131
Telephone: 786-913-4900
Facsimile: 786-913-4901
jennifer.altman@pillsbury.com
markenzy.lapointe@pillsburylaw.com
shani.rivaux@pillsbury.com
aryeh.kaplan@pillsbury.com

Richard M. Segal (*admitted pro hac vice*)
Nathaniel R. Smith (*admitted pro hac vice*)
PILLSBURY WINTHROP SHAW PITTMAN LLP
501 W. Broadway, Suite 1100
San Diego, CA 92101
Telephone: 619-234-5000
Facsimile: 619-236-1995
richard.segal@pillsburylaw.com
nathaniel.smith@pillsburylaw.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2017, the foregoing motion was filed electronically using the Court's ECF system, which will provide electronic notice to all counsel of record, including:

Terry J. Harmon (tharmon@sniffenlaw.com)
Robert J. Sniffen (rsniffen@sniffenlaw.com)
Michael P. Spellman (mspellman@sniffenlaw.com)
Lisa B. Fountain (lfountain@sniffenlaw.com)
Kevin Kostelnik (kkostelnik@sniffenlaw.com)
SNIFFEN & SPELLMAN, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

Robert Christopher Barden (rcbarden@mac.com)
RC Barden & Associates
5193 Black Oaks Court North
Plymouth, MN 55446-2603

Attorneys for Defendant, The School Board of St. Johns County, Florida

/s/ Omar Gonzalez-Pagan

Omar Gonzalez-Pagan

(admitted pro hac vice)

LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

120 Wall Street, 19th Floor

New York, New York 10005-3919

Tel.: 212-809-8585 | Fax: 212-809-0055

ogonzalez-pagan@lambdalegal.org